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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1106

WILLIAM COUSINS, ET AL.,
Petitioners,

vs.

PAUL T. WIGODA, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT

BRIEF FOR RESPONDENTS.

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Respondents.

ON WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT

BRIEF FOR RESPONDENTS.

This brief is respectfully submitted on behalf of respondent, Paul T. Wigoda, plaintiff-appellee below, individually and on behalf of all other duly elected, challenged and uncommitted delegates and alternates to the 1972 Democratic National Convention from the 1st, 2nd, 3rd, 5th, 7th, 8th, 9th and 11th Illinois Congressional Districts similarly situated, in answer to the brief herein filed by William Cousins, et al., petitioners.

QUESTIONS PRESENTED.

1. Does the State of Illinois have a sufficiently compelling interest in preserving the integrity of the free and open primary election required by its statutes to warrant an injunction preventing Illinois citizens from acting as delegates to a national convention representing particular Illinois congressional districts

when they were not elected to such offices and, if by so acting, they restrict the constitutional rights of voters and candidates in said election?

2. Is the convention subject to no law other than its own or is it an assembly affected with a public interest and constitutional obligations as affording the only practical means by which citizens can participate in selecting candidates for high office?

3. Does the history of national political conventions provide any precedent for preventing the courts of Illinois from ordering Illinois citizens not to attend a national convention as delegates representing the State when State law requires that candidates for delegate be popularly elected?

4. Does a national political convention have any right or authority to grant an Illinois citizen immunity from obedience to the State's election laws?

5. Is the right of Illinois voters to associate in a political party and participate in its national convention through freely elected delegates sufficiently important to warrant a restraint on the right of other citizens not elected as delegates to represent voters who did not choose them?

6. Is a litigant who has obtained a judgment in a federal Court of Appeals permitting him to pursue his remedies in a state court bound by a later judgment (itself stayed by this Court and thereafter vacated) issued by another federal Court of Appeals in proceedings to which he was not a party and in which the issues raised in the first court were expressly not decided by the second?

7. Did alleged remarks of a trial judge (later explained by him) which comment on the evidence but which were made after hearing and judgment deprive petitioners of an unbiased judge?

COUNTERSTATEMENT OF THE CASE.

Petitioners' statement of the case nowhere relates the facts upon which the injunctions which led to the opinion of the Illinois Appellate Court are based. This counterstatement is therefore necessary.

The Plaintiff Class.

Plaintiff-respondent, Wigoda, is a citizen and resident of the State of Illinois. He is a registered voter of the 9th Congressional District in which he resides. Wigoda was duly elected a delegate to the 1972 Democratic Party national nominating Convention (hereinafter "the Convention") in accordance with the provisions of the Illinois Election Code (hereinafter "the Code"). (A. 85.)

Wigoda is the representative of the class of persons residing in the 1st, 2nd, 3rd, 5th, 7th, 8th, 9th and 11th Congressional Districts of the State of Illinois (all of which comprise the City of Chicago), who were duly elected as "uncommitted" delegates and alternates to the Convention in a primary election conducted by the State of Illinois in accordance with the provisions of the Code. Wigoda and the class thus described are hereinafter collectively referred to as "the delegates". The delegates are persons of white, black and Latin American extraction and include adult males and females of all ages. (A. 85-86.)

The Election of the Delegates.

The election of delegates representing the Illinois electorate to national nominating conventions of the political parties is provided for and controlled by the statutes of the State of Illinois, to-wit, §§ 7-14 and 14.1 of the Code (Ill. Rev. Stat., ch. 46, §§ 7-14 and 7-14.1) and other sections hereinafter cited. Section 7-1 of the Code provides that the election of delegates and alternates "to national nominating conventions . . . shall be

made in the manner provided in this Article 7 and not otherwise." (A. 86.)

On or before January 19, 1972, the candidates for delegate filed nominating petitions signed by at least one-half of one percent (approximately 300 persons) of the qualified primary electors of the Democratic Party residing in their respective congressional districts.* These petitions were completed in accordance with the provisions of Section 7-10 of the

* Illinois congressional districts had recently been reapportioned pursuant to a plan approved by a three-judge federal court. *Skolnick* v. *State Electoral Board of Illinois*, 336 F. Supp. 839 (N. D. Ill. 1971). The districts from which the candidates ran thus complied with the principle of "one-man one-vote" and were free of invidious discrimination. The so-called Guidelines of the Democratic Party mandated elections of delegates from such districts:

> **"B-6 Adequate representation of minority views on presidential candidates at each stage in the delegate selection process** * * * the Commission urges each State Party to adopt procedures which will provide fair representation of minority views on presidential candidates and recommends that the 1972 Convention adopt a rule requiring State Parties to provide for the representation of minority views to the highest level of the nominating process.
>
> "The Commission believes that there are at least two different methods by which a State Party can provide for such representation. . . . *Second, it can choose* delegates from fairly apportioned districts no larger *than congressional districts.*
>
> "C-5 Committee selection processes * * * the Commission requires State Parties to limit the National Convention delegation chosen by committee procedures to not more than 10 percent of the total number of delegates and alternates. * * *
>
> "*When State law controls,* the Commission recommends that State Parties make all feasible efforts to repeal, amend, or otherwise modify such laws to accomplish the stated purpose." (Emphasis added.)

The Code prescribed an election for delegates in Illinois in accord with B-6 and C-5. This apportionment method was introduced in and enacted by the Illinois legislature at the instance of the Illinois Democratic Party to bring the Code into conformity with the spirit and letter of the so-called Guidelines. (A. 29). A pre-election analysis of the potential effect of this selection system on the not yet elected Illinois delegation is found in Wall Street Journal, 3-14-72, p. 1, col. 1.

Code (Ill. Rev. Stat., ch. 46, §§ 7-10) and filed in accordance with Section 7-12 of the Code. (A. 86.)

Petitioners, each of whom are citizens of the State of Illinois, made no challenge to such petitions nor were such petitions nullified or stricken by the electoral boards of the City of Chicago or the County of Cook. The candidates for delegates were thereafter certified by the State Electoral Board in accordance with Section 7-14 of the Code and their names properly placed on the ballots, with those of other candidates, for the primary election of March 21, 1972. (A. 86.)

Candidates for delegate were placed on the ballot by congressional district. There were 180 candidates for 62 delegate seats. (A. 87.) The candidate's ballot position was, pursuant to *Weisberg* v. *Powell*, 417 F. 2d 388 (7th Cir. 1969), determined by a lottery method. In addition to the candidate's name, the presidential candidate whom he supported was placed in parentheses on the ballot immediately adjacent to his name. If a candidate was uncommitted to any particular presidential candidate, this, too, was shown.*

On March 21, 1972, the Illinois primary was held. Pursuant to order of a three-judge court in *Pontikes* v. *Kusper*, 345 F. Supp. 1104 (N. D. Ill. 1972), *aff'd.*, 414 U. S. 51 (1973), any qualified Illinois voter could vote in the primary for candidates of the Democratic Party. More than 700,000 voters participated in the Democratic Party primary for delegates in the congressional districts herein involved. (A. 138.) The delegates were duly elected by a majority of the qualified electors of the Democratic Party voting in their respective congressional districts in accordance with Sections 7-46 through 7-51 of the Code. The results of the election were canvassed, certified and reported as required by Sections 7-53 through 7-58 of the Code. (A. 86.)

Section 7-63 of the Code provides a procedure by which the results of a primary election of a political party may be con-

* Appendix A hereto shows candidate placement on the ballot by congressional district together with votes received in the election.

tested. The objecting party must file with the Clerk of the Circuit Court of Cook County a petition in writing setting forth the grounds of contest within ten days after the completion of the canvass of the returns in such election by the Canvassing Board. Petitioners at no time availed themselves of said procedure or of any other lawful procedure for the challenging of elections under Illinois law.* (A. 87.)

On April 18, 1972, the Secretary of State of the State of Illinois, pursuant to Section 7-58 of the Code, issued his proclamation announcing the election of the delegates. (A. 87.)

No election for delegates to the Convention was conducted under the Code other than that at which the delegates were elected. (A. 87.)

The Commencement of This Action.

Prior to the issuance of the proclamation by the Secretary of State announcing the election of the delegates, certain of the petitioners**, although they had neither sought election as delegates nor attempted to use the challenge procedure provided by the Code, sought to challenge the credentials of the delegates before the Democratic National Committee on the grounds that party Guidelines had been violated in the election procedure. They filed a "challenge" which was transmitted to the delegates. (A. 4-5.)

This action was commenced by Wigoda, individually and as representative of a class, against the challengers in the Circuit Court of Cook County on April 19, 1972, the day following the proclamation of election, the first date upon which it could be said that the delegates were duly and officially elected. (A. 1-7,

* There were no challenges made by petitioners or *any other persons* to the delegates or to any candidate for delegate at any stage of the election proceedings.

** Cousins, Crowley, Hillman, Jackson, Kennedy, Langford, Raby, Singer and Velasquez. (This group, when differentiated from all petitioners, is hereinafter referred to as the "challengers.")

123.) Wigoda sought a declaration that the delegates had been elected in accordance with the Code and an injunction against harassment of the delegates in the performance of their duly elected offices. (A. 5-6.) Wigoda, with his complaint, filed and served upon the challengers a motion for preliminary injunction, which motion was set for hearing on Friday, April 21. (A. 124.)

The Removal.

During the late afternoon of April 20, challengers filed a petition removing this cause to the United States District Court for the Northern District of Illinois, where it was assigned to Judge Hubert Will. (A. 124.)

On Monday, April 24, Wigoda filed a motion to remand to the Circuit Court of Cook County on the ground that removal was improper. On May 18, Judge Will granted the said motion and rendered an opinion finding no grounds for federal jurisdiction. The court granted a ten-day stay of its remand order to enable an appeal therefrom. The Court of Appeals for the Seventh Circuit subsequently denied further stays on the ground that there was no basis in reason or authority for the removal and, on June 30, dismissed challengers' appeal without oral arguments or the necessity of Wigoda filing a brief in opposition to that of challengers. (A. 124.)

The *only* issue before the District Court on the removal was that of federal jurisdiction. The briefs of both sides were directed *solely* to that issue and in no way to the merits of the controversy. Nevertheless, the District Court gratuitously commented upon the merits, as reprinted at page 15 of petitioners' brief, and continued, . . . "it is difficult to imagine any thoughtful court granting the type of relief requested in the instant case." (A. 16.)

The Court of Appeals for the Seventh Circuit in affirming the remand order per curiam specifically stated, *"We express no*

opinion as to the effect of state law on the determination of proper delegates to the Convention. *

The Challengers' Suit for Injunction.

While this cause was pending before Judge Will, and while his opinion on remand was awaited, challengers commenced another action in the Northern District of Illinois seeking an injunction against the prosecution by Wigoda in the state court of the case at bar. Said lawsuit, entitled *Cousins, et al.* v. *Wigoda,* No. 72 C 1108, sought injunctive relief against Wigoda allegedly for seeking to violate or abridge challengers' First Amendment rights. The challengers' action was ultimately assigned to Judge Frank McGarr. (A. 125.)

Upon the expiration of the stay orders issued by Judge Will, which, under ordinary circumstances, would have permitted the Circuit Court of Cook County to proceed with the instant case, challengers sought injunctive relief from Judge McGarr. Despite Judge Will's finding that no jurisdiction existed in the federal court and his order remanding this cause to the state court, Judge McGarr issued a series of non-reviewable temporary restraining orders preventing Wigoda from proceeding in the state court. Finally, on June 9, Judge McGarr conducted a trial. Evidence was presented. At the conclusion thereof, a preliminary injunction issued against Wigoda barring him from proceeding with the state court action. This order was promptly appealed. (A. 125.)

After a short delay for the submission of briefs, the Court of Appeals for the Seventh Circuit, on June 29, held an expedited hearing. Acting peremptorily from the bench after oral argument, the Court of Appeals reversed Judge McGarr's injunction per curiam, stating, *inter alia* (*Cousins* v. *Wigoda,* 463 F. 2d 603, 606, 607, 608, 1972):

> "There are valid reasons why the courts of Illinois may properly assume jurisdiction over some aspects of the

* The unpublished order is reprinted in Appendix B hereto.

> controversy between Cousins and Wigoda. In the state complaint Wigoda has alleged full compliance with the provisions of the Illinois Election Code; Cousins has not yet disputed those allegations, but retains the right to do so. Moreover, assuming vacancies in the slate of delegates may occur, by death, resignation, or by the successful prosecution of one or more challenges before the Credentials Committee of the National Convention, Illinois law may control, or may affect, the manner of selecting substitutes or alternates. Indeed, the Rules of the National Convention contemplate reference to state law in connection with various issues. (Footnotes omitted.)
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> • • • • •
>
> "We recognize that the time available for appellate review of any order which may be entered by an Illinois chancellor is now extremely limited, since the Convention will soon convene. More time would have been available if Cousins, et al., had mounted their attack before the Illinois election was held in March, or if they had met the state complaint when it was filed on April 18, 1972. The delay in the proceedings since that date cannot be charged to Wigoda, et al.
>
> • • • • •
>
> "The partial stay of the state proceedings cannot be supported by mere speculation that an Illinois chancellor might commit flagrant error. The principles of comity and federalism which the Supreme Court has repeatedly emphasized demand a higher respect for the state judiciary."

The Court of Appeals denied a motion to stay its order and further directed from the bench that its mandate issue forthwith to enable the state court action to proceed without further delay. (A. 125.)

The challengers then sought a stay of the Court of Appeals order from this Court. Hearings were held on the application to stay on Saturday afternoon, July 1, before Mr. Justice Rehnquist. (A. 125.) Late that afternoon, Justice Rehnquist issued his opinion (409 U. S. 1201) denying the challengers' application for stay, stating, *inter alia,* in 409 U. S. at p. 1206:

> "The opinion issued by the Court of Appeals majority specifically alluded to petitioners' [the challengers'] failure to allege that they could not adequately vindicate their constitutional claims in the Illinois state courts, and I must conclude that those courts are available to petitioners for this purpose."

Thus, on Saturday, July 1, nine days before the Convention opened, it appeared that the instant suit could finally be heard by the state court.

However, a subsequent injunction by the Court of Appeals for the District of Columbia caused further delay. "To cast full and proper perspective" on this injunction, reference must be made to the so-called "credentials hearings." *Wigoda* v. *Cousins*, 14 Ill. App. 3d 460, 302 N. E. 2d 614, 619 (1973). (A. 126.)

The Credentials Hearings.

While this case was pending on the motion to remand, a hearing was held by a hearing officer designated by the Democratic National Committee to determine the propriety of the charges made in the challenge filed by the challengers against the delegates. (A. 126.) Numerous objections were raised to this hearing and to the proceedings therein. The hearing officer refused to consider questions of law concerning the legality of the Guidelines (A. 127) and, in other respects, allegedly violated due process rights of the delegates. (A. 138-139.) Nevertheless, the hearing officer issued a report finding that the 59 duly elected delegates had not been elected in accordance with the Guidelines. The hearing officer made no finding of wrongdoing by any individual delegate. Subsequently his report was presented to the Credentials Committee of the Convention, a political body, which, without considering due process objections or other legal issues raised, voted on June 30 to sustain the report and to recommend that the delegates not be seated, but that an alternative delegation (composed of petitioners here) be seated

to represent the subject congressional districts at the Convention. (A. 127.)*

The Keane Litigation.

The credentials hearings, on the complaint to exclude the delegates, were based upon the so-called Guidelines.

Thus, a member of the plaintiff class (Thomas E. Keane) commenced an action in the United States District Court for the District of Columbia (hereinafter "DCDC") to determine whether the Guidelines met constitutional standards. Said action, entitled *Keane, et al.* v. *National Democratic Party, et al.*, was not directed against petitioners but against the National Democratic Party and Democratic National Committee. (A. 127.)

The *Keane* action first came on for hearing in the DCDC on June 20. At that time, the challengers, who had not been

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* The hearing officer's report, though offered by the petitioners, was not received in evidence in any evidentiary hearing held in the instant case (T. 8/1/72, p. 322) nor have petitioners claimed, at any stage of review, that rejection of the said report by the trial court was error. It nevertheless appears in the Appendix as an exhibit to a rejected motion to dismiss and for summary judgment.

The hearing examiner found, *inter alia*, that discrimination had occurred against minorities in the placing of the delegates on the ballot. (A. 38). The peculiarity of this finding is underscored when one considers that among the Blacks elected as delegates were the President Pro-Tem (and majority leader) of the Illinois state senate (the then highest ranking Black state official in the United States), two congressmen, a Cook County commissioner, the President Pro-Tem of the Chicago City Council and other local and party officials who had attained their offices in various prior elections. Twenty-three of the 59 delegates are classified as "minority" representatives by the Guidelines. (A. 37, 139).

Wigoda's objections to the hearing examiner's report, which objections were perfunctorily rejected, are reprinted as Appendix C hereto. In view of the circumstances, the Illinois Appellate Court found that the conclusion of "actual discrimination" by the hearing officer "demonstrates deliberate distortion of the facts." 302 N. E. 2d at p. 626. (A. 139)

In any event, the informal "credentials hearings" were, in no way, a substitute for judical proceedings. See *Alexander* v. *Gardner-Denver Co.*, ... U. S ...., 39 L. Ed. 2d 147, 163 (1974).

named as parties therein, sought and were given leave to intervene. (A. 128.)

The DCDC held three of the four Guidelines challenged in *Keane* to be unconstitutional. On immediate appeal to the Court of Appeals for the District of Columbia (hereinafter "CADC"), the case was held to be premature because the Credentials Committee had not yet ruled on the challenge. (A. 128.)

Subsequently, on June 30, the Credentials Committee, as stated above, reported that the challengers should represent the delegates' congressional districts. (A. 128.)

On Monday, July 3, following the Credentials Committee ruling and Justice Rehnquist's order denying the challengers' application for stay of the judgment of the Court of Appeals of the Seventh Circuit which judgment permitted the state court to proceed, the DCDC again held hearings in the *Keane* case. No evidence was presented. Only arguments on the law pertaining to the constitutionality of the Guidelines were heard. The DCDC again found three of the four Guidelines involved to be unconstitutional, but found the fourth constitutionally sufficient. (A. 128.)

The Democratic National Committee, by counterclaim, sought an injunction from the DCDC against further proceedings by Wigoda in the instant state court action. The motion for injunction was denied. It was the DCDC's opinion that it should not prevent an Illinois state court from considering the delegates' complaint concerning the legality of petitioners' slate. (A. 57.)

Appeals were immediately taken by Keane and the Democratic National Committee to the CADC which held oral argument on July 4. On July 5, the CADC affirmed the DCDC as to the constitutionality of the single Guideline which the DCDC had upheld (Rule C6) and, in addition, issued its injunction to effectuate its judgment and prevent the delegates from proceeding with the instant case in the state court. *Keane* v. *National Democratic Party*, 469 F. 2d 563 (D. C. Cir., 1972). (A. 51-61.)

The CADC stated, *inter alia*:*

> "No violation of Illinois law is at issue here." 469 F. 2d at 572. (A. 54.)
>
> * * * * *
>
> "Judge Hart based his denial of the counterclaim on the grounds that the question of the legality of the slate certified by the Credentials Committee in lieu of the plaintiffs was not before him, and that there was no justiciable issue presented in this action concerning the eligibility of the members of that slate to represent the Illinois districts in question.
>
> "In so ruling Judge Hart seems to have focused solely on the state law claims which apparently are the basis of the state proceeding, and which were not before the District Court here." 469 F. 2d at 573. (A. 57.)

The CADC stayed its mandate for approximately twenty-four hours to enable the delegates to apply to this Court for a further stay on the condition that the delegates take no action inconsistent with the CADC opinion pending such application, i.e., that they not proceed with the Illinois action.

Keane promptly applied for such a stay and, on the morning of July 6th, filed a Petition for Writ of Certiorari.

On Friday evening, July 7th, this Court "stayed the judgment" of the CADC. The Court stated (409 U. S. 1 at pp. 3, 6):

> "The Court concludes it cannot in this limited time give to these issues the consideration warranted for final decision on the merits; we therefore take no action on the petition for certiorari at this time.
>
> * * * * *
>
> ". . . While the Court is unwilling to undertake final resolution of the important constitutional questions pre-

* The opinion of the CADC was in three separately captioned parts. The first considered the California challenge; the second the Illinois challenge and the third "The Illinois Counter-Claim," i.e., the appeal from the denial of injunctive relief against prosecution of the instant Illinois action.

sented without full briefing and argument and adequate opportunity for deliberation, we entertain grave doubts as to the action taken by the Court of Appeals [the CADC].

* * * * *

"The applications for stays of the judgments of the Court of Appeals [the CADC] are granted."*

Trial of the Instant Action—July 8.

This Court rendered its opinion staying the judgment of the CADC on the evening of July 7. Notice was promptly given to petitioners** that the delegates would appear in the Circuit Court of Cook County on Saturday, July 8, for hearing on the complaint for injunction. (A. 129.)

This case thus finally came to trial on July 8, two days before the Convention opened. Petitioners, through their attorneys, moved for a change of venue from the Chief Judge of the Chancery Division of the Circuit Court basing their request on a Washington, D. C. newspaper article which stated that prior to being elected to the bench he had been a party official and legislative leader. The change of venue was granted and in the afternoon of July 8 the case came before the Honorable Daniel J. Covelli. An evidentiary hearing was held. (A. 84-85, 129.)

* After the Convention, this Court granted Keane's Petition for Writ of Certiorari, *vacated* the judgment of the CADC and remanded to the latter court to determine whether *Keane* was moot. 409 U. S. 816 (1973). The CADC held the case moot insofar as it related to Convention seating and affirmed the judgment of the DCDC which denied the injunction which would have prevented prosecution of the instant case. 475 F. 1287 (1973). The CADC has also denied various requests of the challengers for further injunctive relief against the proceedings in the state court and for a rule to show cause directed against Wigoda and others for allegedly violating the CADC's stayed and subsequently vacated injunction order by proceeding herein albeit after the stay was issued by this Court.

** By this time, all persons chosen by the challengers to replace the delegates had been made defendants herein. (A. 127.)

The court, at the conclusion of the hearing, found that on June 22nd and June 24th, 1972,* petitioners were selected as "alternative" delegates and alternates to the Convention in caucuses governed by rules of procedure established by the challengers and adopted by them without regard to the applicable requirements of the Code. (A. 87.)

Petitioners established themselves solely on the basis of their own authority to select delegates from the various Illinois congressional districts involved, without any legal justification or authority from any other people or the laws of the State of Illinois. (A. 88.)

In contrast, the delegates were elected in a free, equal, open and nondiscriminatory election held by the state pursuant to the Code in which, as stipulated by petitioners, anyone could run for office and any qualified person could vote. In said election, there were 180 candidates for 62 delegate seats. (A. 87.)

The court further found that on June 30, petitioners, by resolution of the Credentials Committee of the Democratic National Convention, were certified as delegates and alternates to the Convention in place of the delegates who were duly and properly elected under the Code. (A. 87.)

The court further found irreparable injury in that the delegates "have been deprived of a place of authority, prestige and position to which they were entitled by virtue of the votes of the persons participating in the primary election held pursuant to and in accord with the Illinois Election Code"; that "the duly qualified voters who caused [the delegates] to be elected have been deprived of their right to vote and to vote effectively"; that the "electoral process in the State of Illinois has been subverted, thwarted and nullified by the actions of [petitioners]"; and that the delegates "have been deprived of their rights, obtained pursuant to a lawful election, of participating with other party functionaries in the conduct of the Democratic National Convention

* This was even subsequent to the date permitted by the Guidelines for certification of delegates.

and from taking part in decisions to be made therein, all of which will be vital to the electorate in the State of Illinois who participated in the duly authorized election." (A. 88.)

As the Convention was scheduled to convene on Monday, July 10, 1972, the harm was found to be immediate and, unless an injunction issued, inevitably irreparable. (A. 88.)

The trial court's findings of fact were not objected to at the nisi prius level nor have they been questioned at any stage of appellate review.

Based upon its findings, the trial court ordered that each of the petitioners before the court, all of whom had submitted themselves to the court's jurisdiction and had formally appeared by counsel who were present throughout the hearing, be enjoined and restrained from acting or purporting to act as a delegate to the Convention from or on behalf of the particular Congressional Districts involved or from performing the functions of delegates from the said districts including but not limited to voting in the Convention or in official or duly designated committees thereof. (A. 89.)*

No immediate appeal was taken from this order nor was a stay thereof sought from a reviewing court or a judge thereof. (A. 130.)** Petitioners, however, participated in the Convention

* To guard against any violation of petitioners' First Amendment rights, the trial court deleted from the delegates' proposed decree the following paragraph (A. 89):

> [3. That each defendant listed in Schedule A, their agents, attorneys, servants, employees and other persons acting in concert with them be and the same are hereby enjoined and restrained from holding themselves out to be or representing themselves to be delegates lawfully representing the aforementioned Illinois Congressional districts.] [deleted]

** The case was tried before the Circuit Court of Cook County on July 8. A decree was entered that evening. More than 48 hours remained before the Convention was to convene. Procedures existed under Illinois law for expedited review which enabled one judge of a reviewing court to issue a stay. See S. H. A., Ch. 110A, § 302(b), 305(b). Although both the CADC and this Court had acted on

as delegates representing the various congressional districts. (A. 117, 130.)

The Post-Convention Hearing.

After the conclusion of the Convention, a party caucus of delegates was scheduled to be held in Chicago, Illinois, on August 5. (A. 116.) The delegates moved for supplemental relief. They sought to enjoin petitioners from participating therein and a declaration that they (the delegates) were the only persons authorized by the Code to do so. (A. 115.)

The trial court again held evidentiary hearings. The trial court "heard whatever evidence without limitation that the parties . . . deem fit and proper to present . . .". All parties did, in fact, participate in the hearing for supplemental relief. (A. 116.)

The evidence disclosed the manner in which petitioners were chosen to "represent" the electorate of various congressional districts.

Caucuses conducted by the challengers or persons designated by them were held in each of the congressional districts. The only persons entitled to vote therein for delegates to the Convention were those candidates for delegate who had been defeated for the office of delegate in the election held under the Code. All persons other than defeated candidates were excluded from voting. The defeated candidates were permitted to vote for delegates from the various congressional districts by weighted vote in accord with the vote total which they had received. The persons to be elected as the "alternative delegation" had to conform to various race, age and sex quotas. These rules of election were developed by the challengers themselves without authority from anyone. (A. 80-83.)

The evidence demonstrated the manner in which these rather peculiar election procedures worked. In the 1st Congressional

review in approximately the period of time intervening between the Circuit Court's decree and the Convention, petitioners neither appealed nor made application for a stay to an Illinois reviewing court.

District in which the challengers' meeting was held in a private home (T. 8/1/72, p. 217),* the caucus leader (apparently not a district resident [T. 8/1/72, p. 236]) announced that all of the persons to be chosen to represent the district had to be black or, at best, only one white could be chosen. (T. 8/1/72, p. 245). An Oriental in attendance asked whether he could be elected a delegate. He stated that there was no congressional district in which there were enough Orientals to justify, by quota, an Oriental delegate. The caucus leader advised him that he could not be chosen as a delegate from the 1st Congressional District because he was neither black nor white. (T. 8/1/72, p. 247.)**

The 7th Congressional District is composed of a substantial number of black voters. From this it was determined by the challengers that a certain percentage of the representatives of this district were to be black. A photograph taken at the challengers' caucus to elect delegates demonstrates that there were no black voters in attendance. Blacks were thus chosen solely by whites.

In the 8th Congressional District, although only four persons were permitted to vote for delegates, at least two ballots had to be taken because after the first vote was tallied, because the results did not comply with the race, age and sex quotas imposed by the challengers. (T. 8/1/72, pp. 275, 281, 282, 286.)

In the 9th Congressional District, three of the losers in the primary election were disqualified from participation in the challengers' electoral process because the challengers had determined that they might be representatives of the regular Cook County Democratic organization. (A. 80-81, T. 8/1/72, pp. 312-313.)

* The transcript of proceedings is herein referred to as "T." As the trancript is in various sections, the date and page of the particular hearing is set forth.

** Similarly, Latin Americans were also barred from participation. (T. 8/1/72, p. 245.)

In the 11th Congressional District, the challengers' coordinator, who was not a resident of the district, stated that the rules for choosing the alternative delegation were made by the challengers and excluded all but losing candidates from voting (A. 91): "There is no way for the Democratic primary voters themselves to now cast another ballot."* As he stated to residents of the district who had voted in the primary conducted under the Code but who were excluded from participation by the challengers' "process":

> "Under the rules which have been adopted [by the challengers] and filed with the Democratic National Committee, and which I have authority to interpret and conduct the meeting in accordance with, the rules provide that the votes are to be cast by the persons who ran on the March 21st ballot, received votes in that primary, and were defeated by what the challengers regard as illegal acts by the organization.
>
> "There is no basis for anybody else to cast a vote at this meeting." (A. 93.)

The coordinator confirmed the complete disenfranchisement of the individual electors when he was asked by one of the citizens of the 11th Congressional District:

> "In other words, you don't recognize the individual citizen that voted in the last primary. His vote actually didn't count, doesn't at all?
>
> "Mr. Schmidt (the coordinator): No." (A. 95.)

The coordinator then stated that only 15 persons were entitled to vote with "the intent that those 15 persons would make every effort to choose a delegation representative of this district." (A. 96.) In fact, only 6 persons appeared to choose the

* The challengers' rules under which petitioners were selected to represent Democratic voters thus appear to violate the order of the three-judge federal court in *Pontikes* v. *Kusper*, 345 F. Supp. 1104, which sought to maximize participation by the voters in the Democratic primary by invalidating Illinois' anti-raiding statute. See p. 5, *supra*.

delegation. Mr. Schmidt further stated that the rules were not approved by the National Democratic Party nor by the State of Illinois, but were adopted by the challengers "pursuant to authority which they assumed as the challengers to decide [on] a new Chicago delegation. . . ." (A. 97.)

The exclusion of the voters from petitioners' process is demonstrated by testimony (on adverse examination by respondents' counsel) of William Singer, a challenger and, later, co-chairman of petitioners' delegation (T. 8/1/72, p. 322):

> ". . . Those persons [the losers in the Code election] who received votes who were not tainted were allowed to vote as electors in direct proportion to the number of votes they received. Those persons who were tainted [the winners in the Code election], . . . were not allowed to participate in the meetings. Therefore, persons who cast ballots for those persons [the winners] were not counted in that procedure."

After hearing this and other evidence, the trial court found that after it had issued its injunction of July 8,

> "each of the [petitioners] . . . though not duly elected a delegate or alternate to the Democratic National Convention, in accordance with the provisions of the Illinois Election Code, acted or purported to act as a delegate or alternate to said Convention and sought to perform the functions of delegate or alternate including voting on behalf of the 1st, 2nd, 3rd, 5th, 7th, 8th, 9th and 11th Illinois Congressional Districts." (A. 117.)

The court found that if the petitioners participated in the caucus to be held on August 5, 1972, the court's order of July 8 would be subverted and nullified. (A. 117.)

The trial court reiterated that it had found that the delegates were the only persons who were duly elected in accordance with and pursuant to the provisions of the Code to represent the various congressional districts.

The court further found:

> "2. The election at which the delegates . . . were elected was conducted pursuant to the Illinois Election Code and the Constitution of the State of Illinois and was free and equal and open to all qualified persons as candidates and voters without limitation.
>
> "3. The process by which defendants purported to become representatives of the people of the State of Illinois was secret, restrictive, discriminatory, without foundation in law and without regard or recognition to the individual citizens of the Congressional Districts . . . who voted in the election conducted pursuant to the Illinois Election Code." (A. 118.)

Thus, the court entered a supplemental injunction finding that the delegates were the only persons entitled to participate as delegates in the caucus on August 5, 1972, and restraining petitioners from performing the function of delegate therein. (A. 119-120.)

There has been no challenge, on review, to any of the facts found by the trial court at either of its hearings.

Appellate Review.

The Appellate Court of Illinois, on appeal, affirmed the orders of the trial court. 14 Ill. App. 3d 460, 302 N. E. 2d 614 (1973). (A. 121.) The Illinois Supreme Court denied leave to appeal.

SUMMARY OF ARGUMENT.

Respondents were elected delegates to the Convention in a free, equal, open election conducted pursuant to state statute in which 700,000 voters participated. The State has a vital interest in the preservation of its electoral processes. The rights of the state, and the constitutional rights of its citizens to vote and to effective candidacy are subject to protection by the state's courts. Here, the state court sought to vindicate the state's interest in Illinois citizens' fundamental civil and political rights

by enjoining Illinois citizens not elected under the election laws from serving as delegates representing specified Illinois congressional districts at the Convention in the place of persons validly elected. The state court's action was in all respects proper. It did not violate petitioners' "association rights" but recognized that "the right to vote" is superior to whatever rights petitioners might possess.

In enjoining petitioners, the state court acted in accord with a long line of decisions of this Court protecting and preserving the right to vote in both general and primary elections and recognizing the state's interests in the orderly political processes within the state.

Moreover, the action of the state court is solidly grounded in the decisions of courts of all of the states of the union which have recognized that political parties are subject to state regulation and control. All states have regulated political parties by statute to prevent party abuses and to insure that party organization is responsive to the people.

The so-called "national party" and the Convention do not possess rights superior to those of the states. They cannot give to the citizens of a state immunity from the laws of the state nor protect a state's citizens if they seek to violate state law or state court orders.

The national party and Convention are no more than a federation of the state parties. The Convention meets quadrennially for a specific purpose—to nominate a candidate for President of the United States. At this Convention, representatives of all of the states of the union seek to put forth the views of each state's party electorate at a national level. This they have a right to do.

Neither the Convention nor the so-called national party has, in the past, sought to disregard the law of the state insofar as selection of delegates is concerned. Prior Convention credentials contests do not support the principle that the Call of the Convention is supreme over selection processes mandated by statutes

in the various states for the selection of delegates to the Convention. Rather, history demonstrates a deference to state law and reaction by the states when abuses by the Convention sought in any way to seek to avoid the law of the states.

The state court was not barred from hearing the instant case nor were any findings or orders entered in any other court which might have had either a *res judicata* or collateral estoppel effect upon the state court.

Lastly, petitioners received a fair trial before an unbiased judge. The remarks of the trial judge, taken out of context by petitioners, were, in any event, made after the rendition of a decree. Assuming, *arguendo*, that the remarks were made in the form stated by petitioners (and they were not), they do not demonstrate bias but only a recognition by the court of what the evidence showed. This is demonstrated by the fact that a substantial number of petitioners specifically disassociated themselves from the motion for change of venue. (See Part V hereof.)

ARGUMENT.

I.

THE STATE OF ILLINOIS HAD A COMPELLING INTEREST IN PROTECTING THE INTEGRITY OF ITS ELECTORAL PROCESSES AND THE RIGHT OF ITS CITIZENS UNDER THE STATE AND FEDERAL CONSTITUTIONS TO EFFECTIVE SUFFRAGE.

The delegates were overwhelmingly elected to represent the Democratic Party electorate of certain Illinois congressional districts in an open, free and equal election in which more than 700,000 persons participated.* Petitioners, on the other hand, sought to represent the Democratic Party electorate of these districts on the basis of rules which certain petitioners had formulated providing for closed, restricted proceedings in which only some of the losers in the primary election were permitted to

* This figure does not include those voting on the Republican side.

participate. In such circumstances, it was the responsibility of the Illinois courts, upon proper application, to protect and preserve rights secured under the Code and the state and federal Constitutions. Thus, the orders which refused to permit petitioners "to frustrate the State's interest in maximizing" "citizen and candidate participation in the nomination process", 302 N. E. 2d at p. 629, (A. 146), were, in all respects, proper.

In upholding "the due process and equal protection rights", 302 N. E. 2d at p. 631, (A. 150) of the delegates and voters, the rationale of the Illinois courts was solidly imbedded in American political philosophy and legal precedent, both state and federal. Moreover, the Illinois courts by enjoining certain Illinois citizens from representing others at the Convention cast a proper perspective upon the station occupied by political parties in the American body politic.

The Founding Fathers recognized that "[a] fundamental principle of our representative democracy is, in Alexander Hamilton's words, 'that the people should choose whom they please to govern them.'" 2 Debates on the Federal Constitution 257 (J. Elliot ed. 1876) cited in *Powell* v. *McCormack*, 395 U. S. 486, 541, 547 (1969). As stated by James Madison:

> "As each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters." The Federalist, No. 10, 60 (Modern Library ed.).

The wisdom and expectations of the draftsmen of the Constitution have served as a foundation for continued expansion of popular suffrage. Thus, six of the last twelve Amendments to the Constitution have extended the elective franchise by restricting

limitations thereon and expanding the ambit of protected participation*.

This Court has eloquently stated the temper of the nation. The right to vote is a "fundamental political right, because preservative of all rights." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370 (1886); *Reynolds* v. *Sims*, 377 U. S. 533, 562 (1964); *Williams* v. *Rhodes*, 393 U. S. 23, 31 (1968); *Kramer* v. *Union School District*, 395 U. S. 621, 626 (1969); *Dunn* v. *Blumstein*, 405 U. S. 330 (1970).

> "[T]he right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds* v. *Sims*, 377 U. S. 533, 561-562.

Laws which deny, limit, dilute or discourage maximum participation by citizens in voting for candidates for public office have been consistently stricken. *Dunn* v. *Blumstein*, 405 U. S. 330 (1972); *Smith* v. *Allwright*, 321 U. S. 649 (1944); *United States* v. *Classic*, 313 U. S. 299 (1941); *Williams* v. *Rhodes*, 393 U. S. 23 (1968); *Baker* v. *Carr*, 369 U. S. 186 (1962); *Gray* v. *Sanders*, 372 U. S. 368 (1963). Moreover, it is recognized that the right to vote is by itself meaningless unless the voter can effectively cast a ballot for the candidate of his choice, *Reynolds* v. *Sims*, 377 U. S. 533, 562 (1964); *Williams* v. *Rhodes*, 393 U. S. 23, 31, and be assured that his vote, once cast, will be counted. *Anderson* v. *United States*, ____ U. S. ____, 41 L. Ed. 2d 20, 33 (1974); *U. S.* v. *Mosley*, 238 U. S. 383, 386 (1915); *United States* v. *Classic*, 313 U. S. 299 (1941).

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* Amendment XV (race, color and previous condition of servitude), XVII (senatorial elections), XIX (women's suffrage), XXIII (District of Columbia), XXIV (abolition of poll tax), XXVI (18-year old vote).

"The right to vote freely for the candidate of one's choice is of the essence in a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds* v. *Sims*, 377 U. S. 533, 555. "Obviously included in the right to choose . . . is the right of qualified voters within a state to cast their ballots and have them counted. . . ." *United States* v. *Classic*, 313 U. S. 299, 315 (1941). It is ". . . as equally unquestionable that the right to have one's vote counted is as open to protection . . . as the right to put a ballot in a box." *U. S.* v. *Mosley*, 238 U. S. 383, 386 (1915). "Every voter in a federal primary election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his or her vote fairly counted, without its being distorted . . ." *Anderson* v. *United States*, ____ U. S. ____, 41 L. Ed. 2d 20, 33 (1974).

The right to effective candidacy for public and party office is an obvious corollary to the electorate's right to vote. *Hadnott* v. *Amos*, 394 U. S. 358, 364 (1969); *Williams* v. *Rhodes*, 393 U. S. 23, 30 (1968); *Gonzales* v. *City of Senton*, 319 F. Supp. 189, 190 (S. D. Tex. 1970); *Stapleton* v. *City of Inkster*, 311 F. Supp. 1187, 1189-1190 (E. D. Mich., 1970). See also, Note, "Constitutional Safeguards in the Selection of Delegates to National Nominating Conventions", 78 Yale L. J. 1228, 1247-1249 (1970). To be guaranteed the full extent of the rights acknowledged by the courts in the franchise cases, persons must be granted the concomitant right to stand for office. "The effectiveness of the franchise can just as certainly be curtailed by restricting the group from whom candidates may be drawn as by restricting those entitled to cast a vote or by malapportioning a legislative body." *Stapleton* v. *City of Inkster*, 311 F. Supp. 1187, 1189-1190 (E. D. Mich., 1970).

The right of the delegates to stand for office is a right protected by the equal protection clause, *Williams* v. *Rhodes*, 393 U. S. 23, 30 (1968); *Moore* v. *Ogilvie*, 394 U. S. 814 (1969). and by due process, *Williams* v. *Rhodes*, 393 U. S. 23, 41

(1968), (Harlan, concurring); *Briscoe* v. *Kusper*, 435 F. 2d 1046, 1053-1054 (7th Cir., 1970). To deny protection to the delegates is to eliminate both the opportunity and the incentive of the electorate for participation in the procedure by which the President is selected. See *Williams* v. *Rhodes*, 393 U. S. 23, 41 (concurring opinion, Harlan, *J.*).

Petitioners, in derogation of this bundle of voting rights stemming from pre-constitutional times, (see, e.g., *Powell* v. *McCormack*, 395 U. S. 486, 534 (1969) fn. 65, quoting from 16 Parl. Hist. Eng. 589-590 (1769)),* in effect, argue that the votes for the delegates should not be counted at all and, as a corollary, that the delegates should not have been permitted to run. Thus, the delegates and their constituency were to be excluded from a crucial phase of the electoral process and prevented from participating in the nomination of one of the two major contenders for the presidency of the United States.

In Illinois, as in other states, political parties by tradition and statute have become inextricably intertwined in the state's election process insofar as the selection of party officials, party candidates and presidential electors are concerned. Compare *Redfearn* v. *Delaware Republican State Committee*, 362 F. Supp. 65, 70 (D. Del. 1973). Participation in the party primary for the election of delegates to nominate the standard-bearer in the presidential election was the only effective means by which Illinois Democrats could participate in the selection of

* It was argued in Parliament in 1769 in behalf of John Wilkes in connection with proceedings for his expulsion:

> "That the right of the electors to be represented by men of their own choice was so essential for the preservation of all their rights, that it ought to be considered as one of the most sacred parts of our constitution. . . .

To the same effect is Locke, *Of Civil Government*:

> ". . . every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society, to submit to the determination of the majority, and to be concluded by it. . . ." (Reprinted in Goldwin, 1 Readings in World Politics 37, 2d ed. rev. 1953).

the presidential nominee. See *Nixon* v. *Condon*, 286 U. S. 73 (1932); *United States* v. *Classic*, 313 U. S. 299 (1941); *Rice* v. *Elmore*, 165 F. 2d 387, 389 (4th Cir., 1947). Protection of the right to vote effectively in political primaries, as well as in general elections, is a matter of constitutional concern. *Terry* v. *Adams*, 345 U. S. 461 (1953); *Smith* v. *Allwright*, 321 U. S. 649 (1944). See also, *O'Brien* v. *Brown*, 409 U. S. 1, 15-16 (1972) (dissenting opinion, Marshall, *J.*). As stated in *United States* v. *Classic*:

> "Where the state law has made the primary an integral part of the procedure of choice, or where in fact, the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary is likewise included in the right protected in Article I, § 2. And this right of participation is protected just as is the right to vote in the election, where the primary is by law made an integral part of the election machinery, whether the voter exercises his right in a party primary which invariably, sometimes or never determines the ultimate choice of the representative." (313 U. S. at 318.)

Here, the primary for election of convention delegates in Illinois was not only "an integral part of the procedure of choice" but was the only means by which Illinois Democratic Party electors could select their representatives to the Convention. The State of Illinois, by statute, extended the principle of *Classic* to render presidential primaries as open, free and non-discriminatory as possible. Access to the party primary for a candidate requires a minimal number of petition signatures. No filing fees are assessed nor are there restrictions on the number of candidates for each convention seat or the designation by the candidate on the ballot of the presidential candidate whom he seeks to support. ". . . [P]rovisions were included in the Election Code to insure the due process rights of the participants in elections and the rights of voters would be preserved at all stages of the elective process". 302 N. E. 2d at p. 625. (A. 137-138.) Having adopted a meaningful primary system, the

State of Illinois has a vital and compelling interest, subject to protection by its courts, in preserving the integrity of that system against subversion or usurpation by its own citizens.

Constitutional responsibility for the conduct of elections generally rests with state governments. State laws set up election machinery and determine the qualifications for voting (subject to federal restrictions against limitations upon the suffrage and constitutional mandates for expansion thereof). Obviously, in such circumstance, there is a compelling state interest in the protection and promotion of the state's electoral processes. *Storer* v. *Brown*, ... U. S. ....., 39 L. Ed. 2d 714 (1974); *American Party of Texas* v. *White*, ... U. S. ....., 39 L. Ed. 2d 744 (1974); *Jenness* v. *Fortson*, 403 U. S. 431 (1971). ". . . [P]reservation of the integrity of the electoral process is a legitimate and valid state goal." *Rosario* v. *Rockefeller*, 410 U. S. 752, 761 (1973).

This thesis has consistently been reiterated by the present Court.

In *Storer* v. *Brown*, ... U. S. ....., 39 L. Ed. 2d 714, this Court considered a California primary election law which required, *inter alia*, that an independent candidate not have been affiliated with a political party for a year before the primary. Mr. Justice White, for the majority, stated:

> *"The direct party primary in California is not merely an exercise or warm-up for the general election, but an integral part of the entire election process, the initial stage in a two-stage process by which the people choose their public officers. It functions to winnow out and finally reject all but the chosen candidates.* The state's general policy is to have contending forces within the party employ the primary campaign and primary elections to settle their differences. The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds. The provision against defeated primary candidates running as independents effectuates this aim, the visible result being to prevent the losers from continuing the struggle and to limit

> the names on the ballot of those who have won the primaries and those independents who have properly qualified." (39 L. Ed. 2d at 726.) (Emphasis added.)

The majority held that the one-year disaffiliation provision furthered California's interest in the ". . . stability of its political system" and that the state's interest outweighed the interests of the candidate or his supporters. So, too, Illinois' primary law, which enables all to participate, properly furthers "the stability of its political system" and outweighs the "right" of defeated candidates to disregard the election laws.

Similarly, in *American Party of Texas* v. *White*, ... U. S. ....., 39 L. Ed. 2d 744, Mr. Justice White, addressing the requirement of the Texas primary law, stated:

> "It is too plain for argument, and it is not contested here, that the state may limit each political party to one candidate for each office on the ballot and may insist that intra-party competition be settled before the general election by primary election or by party convention." (39 L. Ed. 2d at 760.)

Thus, this Court has expressly recognized the compelling interest of the state in requiring that intra-party rivalries be settled once and for all in a state-sponsored election and that once the people have spoken in the primary, the struggle for party nomination is concluded, not to be resumed in another forum.

Again, as Mr. Justice White stated in *American Party of Texas* v. *White:*

> "At least where, as here, the political parties had access to the entire electorate and an opportunity to commit voters on primary day, we see nothing invidious in disqualifying those who have voted at a party primary from signing petitions for another party seeking ballot position for its candidates for the same offices." (39 L. Ed. 2d at 763.)

In this case, the State of Illinois, through its legislature, determined that an open primary, with easy access to all candidates and voters, was the proper method of settling intra-party disputes as to who would represent the party's electorate at the Convention. Illinois established election machinery at its expense, conducted the election and gave to the primary system all the protection and safeguards that are employed at general elections. The election was not a charade. Petitioners, like the petitioners in *American Party of Texas*, had access to the entire electorate of the Democratic Party and an untrammeled right to bring out the voters on primary day. Petitioners have never challenged either the openness or fairness of the primary nor do they contend that their right to stand for election was in any way abridged. The electorate and the delegates, however, attained rights under the election. Must then the state courts have stood by helplessly when petitioners, all Illinois citizens, ". . . by placing their hands on each other's heads, looking up at the sky and declaring, 'We are the delegates'**," usurped the offices for which they either had not run or had run for and lost?

Petitioners urge that the state court's injunctions constitute an infringement of their First Amendment right of association. However, the right of association is not totally uninhibited. "Neither the right to associate nor the right to participate in political activities is absolute in any event." *U. S. Civil Service Commission* v. *National Association of Letter Carriers*, 413 U. S. 548, 567 (1973). "Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the State from destruction or more serious injury, political, economic or moral." *Whitney* v. *California*, 274 U. S. 357, 373 (1927) (concurring opinion, J. Brandeis). Restriction is particularly proper where it is necessary to protect the exercise of a more fundamental right—the right to vote. *Smith* v. *Allwright*, 321 U. S. 649 (1944). See also Raymar, "Judicial Review of

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** Royko, "A Hard Look at 'Singer 59'," *Chicago Daily News*, p. 3, July 5, 1972. A portion of this article is quoted in White, *The Making of a President 1972*, 219. The Royko article is reprinted in full in Appendix D hereto.

Credentials Contests: The Experience of the 1972 Democratic National Convention," 42 Geo. Wash. L. Rev. 1, 24 (1973).

Thus, the Democratic Party and the Jaybird Party yielded to the right of Negroes, a disenfranchised minority, to participate effectively in primary election systems. *Terry* v. *Adams*, 345 U. S. 464 (1953); *Smith* v. *Allwright*, 321 U. S. 649 (1944).* The states have for more than 80 years regulated, through a substantial body of legislation, both the structure and activities of political parties. To that extent, the laws have obviously imposed on party members' "right of association." (See Part II hereof.) Petitioners, in asserting that their "rights" supersede those of other Illinois residents to take part in the political process, view their "right of association" in an abstract social and political vacuum. But the coming together of 50 state political parties in a four or five day quadrennial meeting is not an abstract associational exercise. The Convention is a meeting with an express purpose, i.e., the nomination of candidates for President and Vice President of the United States. This "association" is not a private group meeting for discussion or promotion of political ideas; it is an integral step in the selection of the candidates for the highest public offices in the land.

The Democratic voters of Illinois had a right to participate in this process. The right to come together and "associate" in the

* In *Smith* v. *Allwright*, 321 U. S. 649 (1944), the Democratic Party was held by the Texas Supreme Court to be a "voluntary association" and hence free to establish its own criteria for membership. As stated by the Texas Supreme Court: "Without the privilege of determining the policy of a political association and its membership, the right to organize such an association would be a mere mockery. We think these rights,— that is, the right to determine the membership of a political party and to determine its policies, of necessity are to be exercised by the state convention of such party . . ." *Bell* v. *Hill*, 123 Texas 531, 534, 74 S. W. 2d 113. This Court, however, found that "other precedents of this Court forbid the abridgment of the right to vote" (321 U. S. 661) and that membership in the Democratic party was required for participation in the primary. The overriding concern of this Court was preservation of the right to vote which could not be inhibited by the rules of a private association acting in conjunction with the state established primary law.

Convention is not the exclusive right of the people who physically attend the convention; it is the right of the Democratic voters of Illinois to "associate" with other Democrats in that meeting through their elected representatives. It is this associational right which the delegates rightly asked the state court to protect.

Obviously, every Democratic voter in a given state cannot attend the Convention. Thus there must be a method for selecting delegates to enable rank and file Democrats to effectively participate in the nominating process. Illinois enacted a method which maximized the choice of representatives for the maximum number of Democratic electors. In that sense, Illinois' primary election was truly preservative of the right of Illinois Democrats to associate with Democrats of the other constituent state parties. As stated by Mr. Justice Stewart in *Kusper* v. *Pontikes*, 414 U. S. 51, 38 L. Ed. 2d 260, 267 (1973):

> "Under our political system, a basic function of a political party is to select the candidates for public office to be offered to the voters at general elections. A prime objective of most voters in associating themselves with a particular party must surely be to gain a voice in that selection process. By preventing the appellee from participating at all in Democratic primary elections during the statutory period, the Illinois statute deprived her of any voice in choosing the party's candidates, and thus substantially abridged her ability to associate effectively with the party of her choice."*

In *Pontikes*, the right of association in the Democratic Party was denied only to those persons who had voted in the Republican primary within the previous twenty-three month period. In this case, the right to associate with other Democrats was denied to all those Democratic electors who voted for the "wrong" candidates.

* The primary election of 1972 (which gave rise to the above quoted statement), at which the delegates were elected, was held in conformance with the ruling of the three-judge court in *Pontikes* v. *Kusper* (345 F. Supp. 1104 [N. D. Ill. 1972]).

In nullifying the votes of 700,000 Democratic electors, petitioners abridged the right of those electors to associate with other Democrats and to participate with them in the selection of candidates for high office. "Such action is an absolute destruction of the democratic process . . . and cannot be tolerated." 302 N. E. 2d at p. 631. (A. 149.)

The State of Illinois established a concededly free and open primary as the method by which Illinois Democrats would settle intra-party disputes and participate thereby in presidential nominations. The State had an interest and a responsibility to protect the integrity of its elective political processes from total frustration at the hands of Illinois citizens whose goal was to render the votes of Illinois electors totally meaningless. *Jeness* v. *Fortson*, 403 U. S. 431 (1971); *Bullock* v. *Carter*, 405 U. S. 134, 145 (1972); *Storer* v. *Brown*, ... U. S. ....., 39 L. Ed. 2d 714 (1974).

The Circuit Court of Cook County preserved the integrity of the State's political processes with a minimum of restraint on other freedoms. The court ordered only that petitioners, as Illinois citizens, were required to abide by the laws of the state and could therefore not attend the Convention *as the representatives of the voters in the various Illinois congressional districts* when other persons had been elected. The trial court did not order the Convention or its constituent parties to seat the elected delegates. Nor did the trial court order petitioners to absent themselves from the Convention or forbid them from taking part in its deliberations in any other capacity. The court preserved the state's interests by forbidding the petitioners from ignoring or nullifying the results of a primary election, while at the same time minimizing the restraint, if any, on their associational freedoms. The state court did only that which it had the responsibility to do. It enforced Illinois law against the citizens of the State so that the political and civil rights of other citizens to vote freely for the candidates of their choice might be preserved.

II.

THE STATES HAVE LONG HAD THE POWER AND AUTHORITY TO PROVIDE FOR CITIZEN PARTICIPATION IN THE AFFAIRS OF POLITICAL PARTIES THROUGH REGULATED PRIMARY ELECTIONS FOR PARTY OFFICERS AND CANDIDATES.

The Illinois Appellate Court correctly held that, once elected, the delegates' rights to hold office were properly within the protection of the state court. 302 N. E. 2d at p. 628. (A. 144.) Petitioners urge that the foregoing "is without precedent" and "represents a drastic interference" with the rights of citizens to associate in a national party and establish therein standards and rules. (Pet. Br. 40.) However, in discussing the nature of the Convention, petitioners have ignored the nature of the Convention's constituency, i.e., the 50 state political parties, and the nature of the so-called "national party" itself. The significance of petitioners' omissions come into focus when the full scope and extent of state regulation of political parties is examined. The national convention is not, as petitioners urge, a supernational, monolithic body, but is rather a loose quadrennial federation whose member parties are as diverse as the States of the Union. (See Section III hereinafter.) Nor do the state delegations appear mysteriously at the Convention. Each is a representative of its state's party electorate, and arrives at the Convention as a result of a selection process which, in most states, is governed by state law.*

We thus examine the development of the regulatory systems in the several states to demonstrate: first, that the state interest described in Section I is, in fact, an integral facet of American

* State laws relating to the selection of delegates to national conventions are compiled under the direction of Francis R. Valeo, Secretary of the Senate, and printed by the U. S. Government Printing Office in Hupman and Thornton, Nomination and Election of the President and Vice President of the United States (Jan. 1972) and the May, 1972 Supplement thereto.

political life; second, that the rights of association which petitioners claim supersede state laws are, in fact, the subject of a substantial body of law developed in state legislatures and courts to meld the freedom to form parties with the electorate's right to participate fully in the selection of political candidates and party officers and, third, that the right of citizens to vote for party representatives in a primary is well established throughout the country.*

Political parties were not contemplated by the Founding Fathers whose aversion to "factions" was well known. Starr *"The Legal Status of American Political Parties, I"*, 34 Am. Pol. Sci. Rev. 439, 440 (1940). However, in the early years of the

* As we are here concerned with the selection of state party representatives to the convention, our brief focuses only upon that aspect of state party regulation concerning such selection. State regulation of political parties, however, is much more pervasive. Starr, *"The Legal Status of American Political Parties, I,"* 34 Am. Pol. Sci. Rev. 439, 447 (1940). "In each of the states . . . political parties are legally defined public organizations required to transact their most important business in public." Ranney *"Parties in State Politics"*, Jacob and Vines, Politics in the American States, 62 (1965). They are controlled in great detail by state legislation. As Ranney notes, the principal matters regulated are:

> "1. *Access to the Ballot.* Each state specifies the conditions an organization must meet to qualify as a political party and thus get its candidates' names printed on election ballots.
>
> 2. *Membership.* Each state stipulates the qualifications for membership in a party—that is, how one acquires the right to vote in the party's primary elections.
>
> 3. *Organization.* Each state prescribes the number, composition, selection, and functions of the various officials, committees, and conventions that constitute the parties' legal organizations.
>
> 4. *Nominating Procedures.* The state, not the parties, decides how the latters' official candidates for public office shall be selected. . . . most states require that most nominations be made publicly by direct primaries rather than privately by party caucuses or conventions.
>
> 5. *Party Finance.* Most states regulate one or more aspect of party finance: how much a party may spend in election campaigns, who may and may not contribute to party funds, what public reports of receipts and expenditures should be filed, and so on."

Republic, paries and political clubs began to form in each of the states. Although such organizations were regarded originally as private associations, that concept was rapidly overtaken in this century by the reality that such groups were the only practical vehicles for citizen participation in government. *State ex rel. LaFollette* v. *Kohler*, 200 Wis. 518, 548, 228 N. W. 895 (1930); *State ex rel. Webber* v. *Felton*, 77 Ohio St. 554, 569-570, 84 N. E. 35 (1908); *Lett* v. *Dennis*, 221 Ala. 432, 129 So. 33 (1930). As stated by the Ohio Appellate Court in 1908:

> "The national and state governments in the manner of their operation are quite different from what was contemplated in their organization. Political parties were not thought of, but so potent have they become in determining the measures and in administering the affairs of government that they are regarded as inseparable from, if not essential to, a republican form of government. In his 'The American Commonwealth', Mr. Bryce says: 'In America, the great moving forces are the parties * * *. The spirit and force of party has in America been as essential to the action of the machinery of government as steam is to a locomotive engine; or, to vary the simile, party association and organization are to the organs of government almost what the motor nerves are to the muscles, sinews, and bones of the human body. They transmit the motive power, they determine the directions in which the organs act.' " (77 Ohio St. at 569.)

Thus, more than a decade before this Court, in *United States* v. *Newberry*, 256 U. S. 232 (1921), held that political parties offered the only practical route to political office*, state

* As stated by Mr. Justice Pitney, concurring in *Newberry* v. *United States* (265 U. S. at 285-286):

> "It is a matter of common knowledge that the great mass of the American electorate is grouped into political parties, to one or the other of which voters adhere with tenacity, due to their divergent views on questions of public policy, their interest, their environment, and various other influences, sentimental and historical. So strong with the great majority of voters are party associations, so potent the party slogan, so effective the party organization, that the likelihood of a candidate succeeding in

courts recognized that fact and held that primary election laws were necessary to insure the electorate's participation in the operation of political parties and in the nomination of their candidates.

Prior to the enactment of the state statutes, political parties determined their membership and the selection of officers and candidates for public office. However, serious abuses in uncontrolled party activity compelled regulation. Penniman, Sait's *American Parties and Elections*, pp. 257-258 (5th ed. 1952). Beginning in the late 19th century, the states began to enact laws which regulated party functions by providing for primary elections. Merriam and Overacker, *Primary Elections*, pp. 15-16 (1928). "The legislatures of almost all of the states have prescribed in such detail the manner of making nominations that the right to nominate has been altered, on the whole, from an inherent right to a statutory one. In fact, the nomination of candidates has been held to be a mere privilege, granted at will by the legislature under appropriate regulations." Starr, *"The Legal Status of American Political Parties, I"*, 34 Am. Pol. Sci. Rev. 439, 451 (1940).

Today, the overwhelming weight of authority holds that where a state legislature has determined to regulate the right to political office, particularly by means of a primary election, party officials or committees cannot impose requirements or disqualifications inconsistent with those authorized by statute. *Briscoe* v. *Boyle*, 286 S. W. 275 (Tex. Civ. App., 1926); *Malone* v. *Superior Court in and for the City and County of San Francisco*, 40 Cal. 2d 546, 551, 254 P. 2d 517 (1953); *State ex rel. Cook* v. *Houser*, 122 Wis. 534, 100 N. W. 964 (1904); *Walling* v.

an election without a party nomination is practically negligible. As a result, every voter comes to the polls on the day of the general election confined in his choice to those few candidates who have received party nominations, and constrained to consider their eligibility, in point of personal fitness, as affected by their party associations and their obligation to pursue more or less definite lines of policy, with which the voter may or may not agree. As a practical matter, the ultimate choice of the mass of voters is predetermined when the nominations have been made."

Lansdon, 15 Ida. 282, 300-303, 97 Pac. 396 (1908); *Walker* v. *Grice*, 159 S. E. 914, 917-918 (S. C., 1931); *Kinney* v. *House*, 10 S. 2d 167, 168 (Ala. 1942); *Bentmen* v. *7th Ward Democratic Executive Committee*, 421 Pa. 188, 199-203, 218 A. 2d 24 (1966); *O'Brien* v. *Fuller*, 93 N. H. 221, 228, 39 A. 2d 220 (1944); *Lasseigne* v. *Martin*, 202 S. 2d 250, 255 (La. Ct. App. 1967); *Shelly* v. *Brewer*, 68 S. 2d 573 (Fla. 1953); *State ex rel. Merrill* v. *Gerow*, 79 Fla. 804, 85 S. 144, 146 (1920); *D'Alenberte* v. *State ex rel. Mays*, 56 Fla. 162, 47 S. 489, 499 (1916); *Application of McSweney*, 61 Misc. 2d 869, 307 N. Y. S. 2d 88 (1970); *Currie* v. *Wall*, 211 S. W. 2d 964, 967 (Tex. Ct. Civ. App., 1949); *Morris* v. *Peters*, 46 S. E. 2d 729, 738 (Ga., 1948); *State* v. *Martin*, 24 Mont. 403, 62 Pac. 588 (1900).

Where the legislature either has not acted or has permitted matters (such as party loyalty oaths) to remain in the hands of the party, the governing body thereof is free to regulate the matter.* Where, however, the state has established regulations governing the selection of party officials or the criteria for voting in the party primary, the matter is no longer within the party's jurisdiction. *Lett* v. *Dennis*, 221 Ala. 432, 434, 129 So. 33 (1930)**.

* Thus, for example, in *Irish* v. *Democratic Farmer-Labor Party*, 287 F. Supp. 794 (D. Minn., 1968), and *Democratic Farmer-Labor State Central Committee* v. *Holm*, 227 Minn. 52, 33 N. W. 2d 831, 833 (1948), the decisions concerned matters which were not governed by statute and therefore lay within the scope of the party's authority. The Minnesota Statute (Minn. Stat. 202.22-27) cited by the court in *Irish* expressly vests final authority in the party's state central committee.

** The principle that a party's highest tribunal or convention may decide a matter not governed by state law is expressly reaffirmed in *Smith* v. *McQueen*, 232 Ala. 90, 166 So. 788 (1936), cited by petitioners (Pet. Br. p. 77) for their thesis that a national convention is always the supreme authority regarding delegates. There, certain party members sought by mandamus to require the chairman of the state party to certify them as candidates for election as delegates to the national convention. The court stated:

". . . The following from the text of 20 Corpus Juris, 137, is well supported by the cited authorities: *'Except to the extent*

The right of the states to prescribe primaries as the exclusive method for selecting party candidates and officers has repeatedly been found to be well within the state's police power to regulate in the public interest. *State ex rel. Webber* v. *Felton*, 77 Ohio St. 554, 567, 84 N. E. 85 (1908); *Hooper* v. *Stack*, 69 N. J. L. 562, 56 Atl. 1 (1903); *Kenneweg* v. *Commissioners*, 102 Md. 119, 123, 62 Atl. 249 (1905); *State ex rel. McCarthy* v. *Moore*, 87 Minn. 308 92 N. W. 4 (1902); *Ladd* v. *Holmes*, 40 Ore. 167, 66 Pac. 714 (1908); *Sadloch* v. *Allan*, 25 N. J. 118, 122 (1957); *Mairs* v. *Peters*, 52 S. 2d 793 (Fla., 1951); *Riter* v. *Douglass*, 32 Nev. 400, 419-420, 109 Pac. 444 (1910)*;

> *that jurisdiction is conferred by statute or that the subject has been regulated by statute*, the courts have no power to interfere with the judgment of the constituted authorities of established political parties in matters involving party government and discipline, or to determine disputes within a political party as to the regularity of the election of its executive officers.
>
> * * * * *
>
> The first inquiry is, therefore, to what extent is the subject matter of this petition affected by the provisions of the above cited statute?
>
> * * * * *
>
> And the concluding sentence of the section, which is of controlling influence here, is as follows: 'The State Executive Committee of a political party may determine from time to time what party officers shall be elected in the primary; provided, candidates for all party offices shall be elected under the provisions of this Act *unless the method of their election is otherwise directed by the State Executive Committee of the party* holding the election.' " (232 Ala. at 92, emphasis added.)

The court then found that the party executive committee had properly chosen to select the delegates itself, as was within its discretion. The Illinois Election Code vests no such discretion in the party; the selection of delegates is solely within the power of the voters in a primary.

* In *Riter* v. *Douglass*, 32 Nev. 400 (1910), plaintiffs challenged the constitutionality of the Nevada law alleging, *inter alia*, that the statute deprived political parties of the right to determine their membership. The Nevada Supreme Court held that the federal Constitution gave the State the power to legislate in all areas not expressly reserved to Congress and the State Constitution gave the legislature the power to enact laws on any subject not prohibited by the State Constitution:

(*Continued on next page*)

Hennegan v. *Geartner*, 186 Md. 551, 554-555, 47 A. 2d 393 (1945). See also *Opinion of the Justices*, 315 Mass. 761, 765 (1944).

Originally state political parties chose officers and candidates in small caucuses of self-appointed individuals. These caucuses later expanded into conventions. The absence of state statutes left the parties free to choose and disqualify members and candidates as they pleased. However, public dissatisfaction with the bitter factional disputes, manipulations and abuses of the conventions led many state legislatures to enact primary election laws. *Anderson* v. *Cook*, 102 Utah 265, 274, 130 P. 2d 278 (1942); *State ex rel. LaFollette* v. *Kohler*, 200 Wis. 518, 548-549, 228 N. W. 895 (1930). The purpose of these laws was to assure all qualified party electors a voice in the naming of candidates and the widest possible choice among alternative nominees. *State* v. *Meier*, 115 N. W. 2d 574, 576 (N. D., 1962).

In the words of Judge Alton B. Parker, himself once a candidate for president of the United States, the purpose of primary election laws was ". . . to permit the voters to construct the organization from the bottom upwards, instead of permitting leaders to construct it from the top downward." *People ex rel. Coffey* v. *Democratic General Committee*, 164 N. Y. 335, 341-342 (1900)*; *State ex rel. Miller* v. *Flaherty*, 23 N. D. 313,

> "A proper administration of the affairs of a sovereign state affects vitally the welfare of the existence of its citizens, and, where such a matter of vital importance is at stake, the state has the right, under the police power vested in its legislature, to make such reasonable regulations in the interest of public welfare for the nomination of the candidates of the various parties as it may determine." (at p. 419.)

* "The dominant idea pervading the entire statute is the absolute assurance to the citizen that his wish as to the conduct of the affairs of his party may be expressed through his ballot, and thus given effect, *whether it be in accord with the wishes of the leaders of his party or not, and that thus shall be put in effective operation in the primaries, the underlying principle of democracy, which makes the will of an unfettered majority controlling.* In other words, the scheme is to permit the voters to construct the organization from the bottom upwards, instead

327, 136 N. W. 76 (1912); *Riter* v. *Douglass*, 32 Nev. 400, 420, 109 Pac. 444 (1910).*

In the enactment of primary laws, the states recognized what this Court later held in *Nixon* v. *Condon*, 286 U. S. 73 (1932) and *Smith* v. *Allwright*, 321 U. S. 649 (1944), i.e., that in a democracy the right to choose candidates for public office is as valuable to the citizen as the right to vote for them after they are chosen. *State ex rel. Adair* v. *Drexel*, 74 Neb. 776, 790-791, 105 N. W. 174 (1905); *State* v. *Junkin*, 85 Neb. 1, 7 (1909); *Rouse* v. *Thompson*, 228 Ill. 522, 81 N. E. 1109 (1907); *People ex rel. Breckon* v. *Board of Election Commissioners*, 221 Ill. 9 (1906). Thus, where the election laws specify the qualifications for voters at a primary election, party officials cannot impose requirements other than those imposed or permitted by law. *Brown* v. *Cole*, 54 Misc. 278, 104 N. Y. S. 109 (1907); *Young* v. *Beckham*, 115 Ky. 246, 72 S. W. 1092 (1903); *State ex rel. Trosclair* v. *Parish Democratic Committee*,

of permitting leaders to construct it from the top downward." *People ex rel. Coffey* v. *Democratic General Committee*, 164 N. Y. at 341-342. (Emphasis supplied.)

* The Nevada Supreme Court viewed the relationship between the party electorate and the party convention as follows:

"One of the purposes of the direct primary law was undoubtedly to remove candidates from the influence of convention dictators or bosses or those who manipulate the selection of candidates by a superior knowledge of politics in convention by making such candidates so selected, should a convention be held anyway, be ratified by a majority of the voters of the particular party before they become nominees. In other words, the voters may select their candidates directly; or can either ratify the nominations of candidates nominated and recommended by a convention, should a convention be held, or in opposition to the convention candidates, if a convention should be held, reject such candidates if a majority of the voters of the party are not satisfied, or ratify as many of the nominations of such convention candidates as meet with the approval of a majority of the party. *So it is plain that the purpose of the law is not to destroy political parties as contended, but rather to secure and preserve the right of the electors to select their own candidates if not satisfied with the candidates selected in a convention, were one had, for the purpose of the illustration suggested.*" (32 Nev. at 420-421, emphasis supplied.)

120 La. 620, 45 S. 526 (1908). Similarly, where the primary election law governs the qualifications for and right to run as a party nominee for public or party office, the party may not impose requirements on candidacy or the right to hold party office other than those specified in the statute. *State ex rel. Hinyuv* v. *Parish Democratic Committee*, 173 La. 857, 138 S. 862 (1931); *Malone* v. *Superior Court in and for the City and County of San Francisco*, 40 Cal. 2d 546, 254 P. 2d 517 (1953); *State ex rel. Merrill* v. *Gerow*, 79 Fla. 804, 85 S. 144.*

Opponents of state party regulation in general and primaries in particular have urged, in much the same manner as petitioners here, that parties are voluntary organizations and therefore have the right to determine their membership, officials and candidates without government interference. The state courts have uniformly rejected this thesis, holding that primary laws do not infringe upon the right to form parties while recognizing that the importance of parties in the functioning of a democracy warrants reasonable controls to assure voter participation in party affairs. *State ex rel. LaFollette* v. *Kohler*, 200 Wis. 518, 228 N. W. 895 (1930); *State ex rel. Webber* v. *Felton*, 77 Ohio St. 554, 570, 84 N. E. 85 (1908); *Ladd* v. *Holmes*, 40 Ore. 167, 66 Pac. 714 (1908); *Riter* v. *Douglass*, 32 Nev. 400, 109 Pac. 444 (1910).

Elections in Illinois are, by mandate of the Illinois Constitution of 1970 (Art. 3 § 4), and its predecessor, the Constitution of 1870, "free and equal." The courts of Illinois have long required that primary elections be free and open to all qualified party electors. *Craig* v. *Peterson*, 39 Ill. 2d 191, 233 N. E. 2d 345, 347 (1968); *People* v. *Beatharge*, 401 Ill. 25, 37, 81 N. E. 2d 581 (1949); *People ex rel. Breckon* v. *Board of Election Commissioners*, 221 Ill. 9, 18-19 (1906). The Illinois primary laws

* Thus, presidential electors nominated by a state convention when the law specified that they were to be chosen by a primary election, were not the party's legal nominees and could not be placed on the general election ballot. *Lillard* v *Cordell*, 200 Okla. 577, 198 P. 2d 417 (1948).

provide the exclusive method by which convention delegates and other party leaders are to be elected. Under Illinois law, the delegates are the legal representatives of both the party and the people at the Convention. As stated by the Supreme Court of Illinois in *People* v. *Swietzer*, 282 Ill. 171 (1918):

> "They are elected at a direct primary election of their respective political parties in which each member of the party is entitled to exercise his choice, and they are made the legal representatives of their respective parties. They are elected as the general representatives of the members of the party, and collectively they constitute the county convention for nominating candidates and may exercise all the powers of the political party in that regard." (282 Ill. at 176.)

To safeguard the validity of primary elections, the Code provides for specific methods of challenging the election procedures and the results thereof so as to preserve due process rights. Thus, the entire statutory scheme in Illinois requires that political parties be constructed, in the words of Judge Parker, "from the bottom upward" rather that "from the top downward."

Petitioners' challenge rests on the premise that they and various party functionaries are a force superior to the will of the voting majority and that the votes cast for delegates at a legally constituted election are somehow less significant than any other votes. This premise is diametrically opposed to the Illinois Constitutional guaranty of "free and equal" elections which holds that each vote is equal in its influence on the result as any other vote. *Craig* v. *Peterson*, 39 Ill. 2d 191, 233 N. E. 2d 345 (1968); *Moran* v. *Bowley*, 347 Ill. 148, 162-163, 179 N. E. 526 (1932). As early as 1886, the Illinois Supreme Court stated in *People ex rel. Grinnell* v. *Hoffman*, 116 Ill. 587 (1886):

> "Elections are free where the voters are subjected to no intimidation or improper influence, and where every voter is allowed to cast his ballot as his own judgment and conscience dictate. Elections are equal when the vote of every elector is equal, in its influence upon the result, to the vote of every other elector,—when each ballot is as effective as every other ballot." (116 Ill. at 599.)

Illinois' primary election laws have been in effect for approximately sixty years. They are intended to maximize participation in the political processes of the state.* For years, a certain percentage of delegates to the Convention were popularly elected. The law was amended prior to the 1972 primary to provide for popular election of an even greater number of convention delegates.** The constitutional validity of the Illinois law and primary election laws in other states has been well established in numerous cases decided over the past 73 years. See Starr, *"The Legal Status of American Political Parties, I,"* 34 Am. Pol. Sci. Rev. 439, 448 (1940). Petitioners in this case either lost in the primary or declined to run. Therefore the state may say that they cannot hold the offices to which they were not elected. See, *Sadloch* v. *Allan*, 25 N. J. 118, 124-125, 335 A. 2d

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* In *People ex rel. Breckon* v. *Board of Election Commissioners*, 221 Ill. 9 (1906), relator filed a petition for a writ of mandamus to direct the defendant Board of Election Commissioners to allow the Socialist Party to hold a primary election. The Illinois Supreme Court stated (at 18-19):

> "The right to choose candidates for public offices whose names will be placed on the official ballot is as valuable as the right to vote for them after they are chosen, and is precisely of the same nature. There is scarcely a possibility that any person will or can be elected to office under this system unless he shall be chosen at a primary election, and this statute, which provides the methods by which that shall be done and prescribes and limits the rights of voters and of parties, must be regarded as an integral part of the process of choosing public officers, and as an election law. It is undoubtedly true, as urged by counsel for defendants, that it has become not only proper, but necessary, to provide additional safeguards and protection to the voters at primary elections, to the end that their will may be fully expressed and faithfully and honestly carried out, and any law having that object in view would naturally commend itself to the law-making power. The legitimate purpose of such a law, however, must be to sustain and enforce the provisions of the Constitution and the rights of the voters, and not to curtail or subvert them or injuriously restrict such rights."

** This legislation was also in accord with Party Guidelines, see p. 4, fn. *supra*.

173 (1957); *State ex rel. McCarthy* v. *Moore*, 87 Minn. 308, 92 N. W. 4 (1902) (holding that a candidate who was defeated in the primary could not thereafter have his name printed on the ballot in the general election).

To hold, as petitioners urge, that the national convention, (which is itself nothing more than a meeting of the state and territorial parties), may, in effect, forbid the states from controlling their own election laws will work a radical change in the regulation of our political parties. Petitioners chose themselves as the delegates in a manner reminiscent of the earliest, and now discredited, caucuses in which delegates were self-appointed. In petitioners' meetings only certain of the losers in the primary could vote and no popular participation by Democratic electors was permitted. This reincarnates the very abuses which the primary election laws were designed to eliminate.

It bears repeating that the Illinois court did not, as petitioners argue, seek to dictate to the Convention who it must accept. ". . . [T]he Circuit Court of Illinois was not intervening in the Convention, but only exercised its jurisdiction over the delegates and challengers under the Illinois Election Code." 302 N. E. 2d at p. 622. (A. 132.) The state court merely forbade certain Illinois citizens from usurping party offices to which they were not elected. It is possible that the Convention would have rejected the elected delegates and that Chicago, Illinois would have been without representation at the convention. This result would be preferable to a situation in which spurious representatives who were not elected would be permitted to speak for the Democratic Party electorate. The right of citizens to vote effectively in a primary for party representatives is now deeply engrained in the political fabric of many states. Petitioners, however, would deny to the states the power which has been upheld for at least seven decades to require that all citizens be allowed an equal voice in choosing their party's representatives. Neither petitioners nor the Convention have authority to impose on the voters of Illinois pretenders, such as petitioners, who are without any mandate from the people.

III.

POLITICAL PARTIES AND CONVENTIONS CANNOT CONSTITUTIONALLY SUPERSEDE A VALID STATE PRIMARY LAW PROVIDING FOR POPULAR ELECTION OF CONVENTION DELEGATES.

A. "National Parties" and National Nominating Conventions Do Not Supersede the States.

Neither the "National Party" nor the Convention are empowered to grant to petitioners exemption from obedience to legitimate state regulatory schemes. The Guidelines "in no way take precedence in the State of Illinois over the Illinois Election Code." 302 N. E. 2d at p. 625. (A. 137.) Nor can the interposition of a defense that the Convention seated petitioners invalidate the effect of an injunction lawfully issued by a state court against certain of its citizens to protect constitutionally valid rights and interests of the state and its electorate. Neither the "National Party" nor the Convention is a governmental or quasi-governmental body to which a court, state or federal, owes deference. At best, these bodies are agencies affected with a public character and constitutional obligations because they are directed toward the control of governmental personnel and policies.*

Petitioners and amicus make extravagant claims for the powers of both the "National Party" and the "National Nominating Convention." Analysis, however, demonstrates that these claims are unjustified. The "National Party" is not a monolithic, supernational entity standing above, or even on a par with, federal or state governmental units. Nor have "national nominating conventions" acted as if their Calls supersede state law. (See, *infra* Section III B.)

* In the context of the instant case, it is not necessary to determine whether Convention action is "state action" within the meaning of the Fourteenth Amendment.

Although reference is generally made to the "national party," non-ideological analysis of the nature of the two major parties confirms that they have practically no national organization and that the central offices thereof have no effective control over the structures, procedures, performances, policies or morals established by the state parties of the same name. The national parties are more accurately defined as loose coalitions of state parties intermittently united to capture the presidency. Ranney, *Parties in State Politics*, in Jacob and Vines, *Politics in the American States* 61 (1965); Fenton, *People and Parties in Politics* 19 (1966). "The function of the Democratic National Committee and the Republican National Committee with offices in Washington is admittedly confined to arranging the next presidential convention. . . . The Democratic and Republican parties are each a federation of fifty state parties, each with its own independent structure, rules, procedure and traditions, constrained by diverse state laws." National Municipal League, *State Party Structure and Procedure* 1 (1967).*

It is characteristic of American parties that they are loosely structured and highly decentralized. In fact, it is well recognized that at no time in American history has there been a nationwide political party of enrolled members. See *U. S. News & World Report*, July 10, 1972, p. 13, col. 3; Stewart, *One Last Chance, the Democratic Party, 1974-76*, 176 (1974). To this extent, our political parties reflect our federal system and "the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger* v. *Harris*, 401 U. S. 37, 44 (1971). The coming together of the state parties in a quadrennial meeting under a single banner serves to tie together what would otherwise be diffusive elements in "Our Federalism". The parties do no more than reflect the diversity of the states and, as demonstrated in Part II hereof, take their structure and organization from them except insofar as the common goal of electing a president and an overlay of federal law serve to regulate some aspects of political life.*

* The National Municipal League is in the process of updating its state-by-state compendium. Counsel is advised that the conclusions reached in the volume soon to be published are identical to those quoted from the 1967 study.

Nor is the Convention truly supreme. National conventions, and national committees, are the creatures of the state parties, not their masters. National committee members and delegates from each state to the national convention are selected by state party organizations (e.g. a committee or convention) or by popular primary election. Thus, the national governments and committees are little more than confederations of local entities and leaders. Fenton, *People and Parties in Politics*, 93 (1966). The convention meets only at intervals; it has no continuous existence. It is brought together for a specific, temporary function and is dissolved when that function is discharged.

The convention represents an advance over earlier methods for selection of the presidential nominee. Originally the nominee was chosen by a small group of party leaders. The arena of participation was broadened to a caucus and ultimately a national assembly was called where representatives from the various states could meet in a convention.

The advantages of such a national assembly reflecting the will of the people of the various states were stated by the Chairman of the Democratic Convention in his opening address in May, 1832, at the first Democratic National Convention:

> "The object of the representatives of the people of New Hampshire, who called this convention was, not to impose on the people, as candidates for either of the two first offices in this government, any local favorite; but to concentrate the opinions of all the states. They believe that the great body of the people, having but one common interest, can and will unite in the support of important prin-

* For a compendium of such laws see Hupman and Thornton, *Nomination and Election of the President and Vice President of the United States* (January 1972), and the May 1972 supplement thereof.

> ciples; that the operation of the machinery of government confined within its legitimate sphere is the same in the north, south, east and west; that although designing men, ever since the adoption of the Constitution, have never ceased in their exertions to excite sectional feeling, and to array one portion of the country against another the great and essential interests of all are the same. They believe that the coming together of the representatives of the people from the extremity of the union would have a tendency to soothe, if not to unite the jarring interests, which sometimes come into conflict, from the different sections of the country . . . They believed that the example of this Convention would operate favorably in future elections; that the people would be disposed, after seeing the good effects of this Convention in conciliating the different and distant sections of the country, to continue this mode of nomination." Quoted in Penniman, Sait's *American Parties and Elections*, 266-267 (1948).

The choice as to who shall be the "representatives of the people" has traditionally been left to state parties and legislatures. Schmidt and Whalen, *Credentials Contests at the 1968- and 1972- Democratic National Conventions*, 82 Harv. L. Rev. 1438, 1456 (1969).

For a century and a half, the Democratic Party remained largely indifferent to the procedures used by state parties in selecting delegates to the national convention. This indifference extended to rejection by its own Credentials Committee of several contests based upon alleged violations of state law and state party rules. Segal, *Delegate Selection Standards: The Democratic Experience*, 38 Geo. Wash. L. Rev. 873, 878 (1970). Thus, the proposition sometimes asserted by contemporary commentators that the call for a national convention supersedes state law "is unjustifiably broad." Raymer, *Judicial Review of Credentials Contests: The Experience of the 1972 Democratic National Convention*, 42 Geo. Wash. L. Rev. 1, 21, fn. 135 (1973).*

* It should be noted that the series of law review articles asserting the bald proposition that the call for a national convention supersedes state law or that the Convention solely or "traditionally" controls the seating of delegates have been written by various persons involved with the drafting and enforcement of the Guidelines used by the 1972 Democratic Convention. Raymer was a member of the 1972 Credentials Committee, 42 Geo. Wash. L. Rev. at p. 1 (1973); Calvin Bellamy (*Applicability of the Fourteenth Amendment to the Allocation of Delegates to the Democratic National Convention*, 38 Geo. Wash. L. Rev. 892 (1970)) was Legislative Assistant to the Chairman of the Democratic Party's Commission on Rules; Schmidt and Whalen (82 Harv. L. Rev. 1438 (1969)) represented petitioners at the Convention and on review; Eli Segal (*Delegate Selection Standards; The Democratic Party's Experience*, 38 Geo. Wash. L. Rev. 873 (1970)) was counsel to the Democratic Party's Commission on Party Structure and Delegate Selection. The plethora of law review articles asserting the same proposition is reminiscent of the "steamroller" tactics employed at the 1912 Republican Convention which served as an example to the nation of the inadequacies of Convention procedures. That discredited Convention caused a party split and gave impetus to the movement for direct primaries. David, Goldman and Bain, *The Politics of National Party Conventions* 260-261 (1960). The term "steamroller" described the following manipulation of credentials:

> "The faction controlling the national committee would sponsor contests against delegations committed to its opponents. Then its majority, voting in the national committee, would seat the faction's delegations on the temporary roll. The convention majority thus created could then vote itself onto the permanent roll in preparation for controlling the nominations. This game could be played easily with the delegations from the southern states, which after the Reconstruction period owed no responsibilty to any substantial constituency."

Traditional students of the primary system and convention history have generally considered that a system whereby the state elects its delegates to the National Nominating Convention settles seating controversies. In such circumstances there is little opportunity for contests to arise, unless losing candidates allege fraud in the voting or in the counting of the ballots. Goodman, *The Two Party System in the United States*, 196, 206 (3rd Ed.); Overacker, *The Presidential Primary* 166-167 (1926).

Thus, commentators on the conventions have considered the principle to be firmly established that the national nominating convention will recognize the selection of delegates chosen in a non-discriminatory primary election. See Merriam and Over-

acker, *Primary Elections* 187 (1928). ". . . [N]o delegation elected in a primary has been the subject of a seating contest of any significance since 1912 [the year of the "steamroller"]. Even delegations elected in open primaries that were apparently raided by members of the other party have been seated without comment on the questionable nature of their credentials . . . [T]he fact that apparently no such effort [to mount a seating contest after a primary election] has ever been pressed is attributed to the legitimacy with which primary elections are endowed by public attitudes, so long as the state's own procedures have been duly followed, and even when the vote is not confined by law to members of the party." David, Goldman and Bain, *The Politics of National Party Conventions* 264-265 (1960).

In fact, most commentators have considered that a rejection of popularly elected delegates would be unconstitutional as in derogation of the right of citizens to participate and vote in the nomination and election of the president. Note, *Judicial Intervention in the Presidential Candidate Selection Process: One Step Backwards*, 47 N. Y. U. L. Rev. 1220, 1221 (1972); Raymer, *Judicial Review of Credentials Contests: The Experience of the 1972 Democratic National Convention*, 42 Geo. Wash. L. Rev. 1, 36 (1973).

Popular election of delegates to national nominating conventions began as a direct result of abuses fostered by the Convention itself. In the 1904 Republican Convention, a dispute arose between two groups of Republican party officials, each claiming that it had held a regular and proper state convention to choose candidates for the general elections and delegates to the party's national convention. Wisconsin statutes provided for the creation of a party tribunal to make determinations and advise the Secretary of State in such disputes. The tribunal designated by the Wisconsin statutes decided for one group; the national convention for the other. This led to the decision of the Wisconsin Supreme Court in *State ex rel. Cook* v. *Houser*, 122 Wis. 534,

100 N. W. 964 (1904)* and, subsequently, to the passage by the Wisconsin legislature in 1905 of the first primary election law. Overacker, *The Presidential Primary* 10-11 (1926).

On reflection, it does not appear unusual that the state should have so strong a voice in the selection of delegates to the conventions which choose the nominee of our principally designated parties for President. The Constitution and federal statutes provide that the electors for President shall be appointed in each state and that the state shall settle controversies or contests concerning their appointment. U. S. Const. Art. II, § 1; U. S. Const. amend. XII; 1 U. S. C. ch. 3, as amended. In Illinois, electors are chosen by state party convention. They meet, pursuant to statute, on a date subsequent to the popular election, to cast their ballots in the electoral college. Ill. Rev. Stat. ch. 46, §§ 7-9, 21-4. Although the names of the Presidential nominees appear on the ballot in Illinois, this appears to be by tradition and for convenience rather than by statutory requirement. There is no statute

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* The Wisconsin Supreme Court stated:

> "We do not find anything in any . . . cases remotely, even, sustaining the proposition that the decision of the national convention of a party is superior to the decision of a state tribunal of the same party, where the latter tribunal is made the sole judge by legislative enactment, or otherwise.
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> * * * * *
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> "In view of the foregoing, since the law of this state has provided the conditions under which the party nominees shall go upon the official ballot, how can it be reasonably said that the decision of the national convention of a party can nullify it? The answer seems so plain as not to warrant this extensive treatment of a matter. Nothing but the great importance of the case could be held to justify it. The moment the conventions performed their work of choosing candidates, the rights of such candidates to have their names placed upon the official ballot became irrevocable privileges, subject only to the legislative condition. *That such condition could be displaced by any mere party authority, either within or without the state, dignifying it as paramount to the sovereign will of the people and so binding its courts and its special tribunal created to decide the matter does not seem to us to have support in reason or authority.*" (122 Wis. at 586, 589, emphasis supplied.)

either of the United States or of the State of Illinois providing for the appearance of the name of the Presidential candidate on the ballot. Thus, in accord with the constitutional mandate, it is the state which (subject to certain limitations hereinabove referred to) regulates and determines its own election procedures.

Petitioners would have the Convention assume greater powers over its membership than those accorded Congress. As this Court held in *Powell* v. *McCormack*, 395 U. S. 486 (1969), the House of Representatives has no power to exclude from its membership any person who was duly elected by his constituents and who met the age, citizenship and residence requirements specified in the Constitution. As stated by the Court:

> "Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds. In short, . . . examination of the basic principles of our democratic system persuade us that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote." (395 U. S. at p. 548).

The Convention, too, "has an interest in preserving its institutional integrity." There are many methods, however, which can be employed by the Convention, short of excluding popularly elected delegates, by which this can be accomplished. Membership on convention committees may be denied. Party offices can be given to representatives of those states whose delegates are not questioned or to non-elected citizens of the state in question.

The history of our political parties has been one of conflict, accommodation and give-and-take among competing groups within the party. The primary election is one of the time honored methods by which such disputes may be resolved. The decision of the party electorate, however, once again, is inviolate, and cannot

be erased or overridden by the Convention's denial of admission to a popularly elected group of delegates.

It is not "an obviously intolerable result" (A. 13) that the fifty states establish the qualifications of their respective delegates. Party policy is not determined and imposed from "on high" but is a result of accommodation among the various groups within the party. If a state delegation, selected by a constitutionally permissible nondiscriminatory method, is unwilling to abide by such policy, and professes its disloyalty to the Convention or the nominee, its proper course is to leave the Convention. This, however, differs from pre-convention exclusion because the elected delegates are somehow "tainted."

B. The History of National Convention Credentials Disputes Does Not Reveal the Existence of a Compelling National Party Interest to Overturn the Results of a Free and Open Primary Election.

The history of national convention credentials contests does not provide the precedential authority attributed to it by petitioners. The credentials contests discussed by petitioners and amicus involved delegations which were presumably selected pursuant to a method authorized by the state law, but petitioners have failed to consider either the full context of the various challenges or the substance of the state laws under which the challenged delegates were selected. Moreover, while petitioners' survey of credentials contests may show instances wherein a national convention refused to seat a "lawfully" selected delegation, they have failed to show a pattern of rejection by national conventions of *popularly* elected delegates chosen in free, open and nondiscriminatory primaries. Nor does the history of national conventions reflect an interest of sufficient importance to overcome the compelling interest of the state in maintaining the integrity of its primary election laws.

The fact that national conventions since 1832 have entertained credentials challenges is little more than an interesting historical statistic unless placed in the context of the times in which the challenges occurred. For example, early national party conventions were the supreme tribunals of intra-party factional disputes because there was frequently no state law governing such matters. As noted previously, early party conventions were essentially self-appointed caucuses. The national conventions were therefore logical arbitrators of the right to represent the constitutent states in the quadrennial assembly. Absent state statutes, state parties had the inherent right to govern themselves and the refusal of a national convention to seat a challenged delegation usually posed no conflict with state law.

For example, the 1880 Republican convention, relied upon by petitioners (Pet. Br., p. 54-55), had before it the issue of whether Illinois delegates chosen at district conventions should be seated over those selected at the traditional state convention. Petitioners note that the minority position urging that each state had a right to choose its method of selection was rejected by the convention. However, there was, in fact, no conflict between state law and the convention's decision, since Illinois apparently had no statutes governing the selection of national convention delegates.*

Later challenges to delegates selected in accordance with state law similarly do not reflect an historically compelling interest in replacing delegates chosen directly by the party's electorate with those who have not successfully pursued their seats in a primary. Most of these challenges concern delegations selected by the discretionary authority of either a state party convention or a

* Thus, a speaker urging support of the traditional state convention's choices referred only to ". . . the precedents which have been established by long usage of the party in the state of Illinois." (Proceedings, 1880 Republican National Convention, p. 105). Another speaker admitted that his "title" to the convention seat was nothing more than the credentials issued to him by the state convention. (Id. at p. 113).

group of party officials.* As previously shown (Part II hereof), state courts have uniformly held that where a statute is either silent with regard to a party function or leaves the matter to the party's discretion, party rules govern the issue. In such circumstances, the action of a state party might well be overruled by the national convention for want of any other authority with jurisdiction to do so. Action of a national convention does not necessarily conflict with state law where the law either by default or positive direction renders certain matters internal affairs of the party. State courts typically decline to interfere with political parties if a matter such as convention delegate selection is left to the internal discretion of the state party. There is no conflict with state law when another level of the party challenges the discretionary action of a constituent state organization. Thus, in assessing the precedential weight of prior credentials challenges, the extent of the discretion vested by statute in party organs or functionaries must be examined in detail. The context in which the cited challenges arose and were disposed of must be similarly examined, since the circumstances of each challenge bear on its validity as historical precedent.**

One of the clearest recent examples of a challenged delegation chosen by whim of state party officials was the Georgia delegation to the 1968 national convention. Georgia state law gave

* Thus, for example, certain at-large delegates from Virginia challenged at the 1888 Republican National Convention were selected by the state committee because the "organic law" of the state apparently so directed. (See, Proceedings of 1888 Republican National Convention, p. 75).

** Thus, for example, the minority report opposing the seating of the "regular" Mississippi delegation to the 1948 Democratic National Convention did not support a group of challengers since none existed. The sole objection to the Mississippi delegation concerned the conditions appended by the state convention to the delegation's credentials binding them to withdraw from the national convention unless it approved a plank supporting states' rights and denying the delegates the power to bind the state party to the support of any nominee who favored President Truman's civil rights program or failed to denounce that program. (Bain and Parris, *Convention Decisions and Voting Records* (2d Ed.) 1973, p. 273.

to the party executive committee complete power to formulate rules governing delegate selection. These rules, in turn, empowered the state chairman to designate all of the delegates to the national convention. The state chairman together with then Governor Lester Maddox chose all the delegates. Congressional Quarterly Service, *The Presidential Nominating Conventions—1968*, p. 108. Reacting to clear evidence of racial discrimination in the selection of delegates, the convention split the delegation between the regulars and challengers. (Id. at p. 117). However, the solution imposed by the convention did not create a conflict with state law. Georgia statutes had given untammeled control of delegate selection to party officials. When they abused their discretion, the national convention simply refused to accept their decision.

Similarly, the 1964 and 1968 challenges to the Democratic delegation from Mississippi concerned delegates chosen not by popular vote but by a convention system. The challengers alleged and proved systematic, invidious discrimination against black participation in the Democratic Party of the state. The 1964 Credentials Committee heard testimony from Mississippi blacks who were prevented by intimidation, illegal procedures and sometimes violence from even registering, let alone voting.* In addition, the loyalty of the regular Mississippi delegation was subject to serious question. The Convention imposed a loyalty oath on the regular delegation and seated two of the challengers as delegates at large to the whole convention with the rest of the challengers invited to attend as "honored guests." Bain and Parris, *Convention Decisions and Voting Records* (2d Ed, 1973) p. 315; *Proceedings of 1964 Democratic National Convention*, p. 31.

* For example, Fannie Lou Hamer, a sharecropper's wife, described the physical violence and economic pressure to which she was subjected when she sought to register to vote in Mississippi. Bain and Parris, *Convention Decisions and Voting Records* (2d Ed., 1973), p. 315.

Similarly, testimony before the 1968 Credentials Committee showed numerous irregularities and the same pattern of racial discrimination in Mississippi delegation selection procedures as in 1964. The regular party delegation had only one black delegate. Congressional Quarterly Service, *The Presidential Nominating Conventions—1968*, p. 98. However, the only issue of state law presented to the Convention was whether the so-called "Loyal Democrats" properly existed under state statutes and could use the party name (id. at p. 98). In Mississippi, as in Georgia, the statutes vested control over delegate selection not in the voters but in party organizations and personnel. In both Mississippi contests, the discretion vested in the state conventions by statute was abused through the exclusion of blacks from meaningful grass roots participation in party affairs. The 1964 National Convention expressly warned that racial discrimination against blacks in the selection of delegates was not to be repeated. *Proceedings, 1964 Democratic National Convention*, pp. 30-31. However, party officials in Mississippi, exercising the freedom of authority left to them by the state statutes, failed to heed the warning and the 1968 Convention responded accordingly.

There is an obvious contrast between the discrimination practiced by party officials in Georgia and Mississippi and the concededly free and open primary election held pursuant to the Illinois Election Code. Petitioners do not, and indeed could not, charge racial discrimination in the conduct of the Illinois primary election. Blacks and whites ran as candidates for delegate and voted without any interference from state party officials who were themselves bound by state law to accept the voters' decision. Moreover, while Georgia and Mississippi law left delegate selection to the internal workings of the political parties or their conventions, Illinois law placed such responsibility solely in the hands of the voters.

In contrast to the Mississippi and Georgia actions, the national conventions of both parties in this century have generally given

considerable deference to state law when that law authorized the rank and file party electorate to assume a meaningful role in the selection of convention delegates. Petitioners have cited the statement of Daniel O. Hastings of Delaware in the 1928 Republican Convention (Pet. Br., pp. 57-58) contending that the laws of Texas were not binding upon the Convention. Petitioners, however, failed to state that Judge Hastings was speaking for the minority report of the Credentials Committee which recommended ousting the delegation chosen in accordance with state law and that his position was overwhelmingly rejected by the full Convention.* *Proceedings of the 1928 Republican National Convention*, pp. 68-69.

The challenged Texas delegates had been elected at the state convention; the challengers, at district conventions for which apparently no provision existed in the Texas statutes. In support of the majority report, Mrs. Mabel Walker Willebrandt of California noted that the challengers had participated in the state convention but had bolted and held a rump convention. *Proceedings of the 1928 Republican National Convention*, p. 56. Mrs. Willebrandt repeatedly referred to the fact that the state convention had been held in accordance with state law and that the issue before the Credentials Committee was how the state law was to be construed. She stated:

> "It is admitted by both sides that the statute above quoted is the only provision for the election of delegates to the National Convention under the Texas law, and that if the statute is to be construed so as to provide for the election of all the delegates to the state convention, then no other provision existed under the laws of Texas for the election of district delegates to national conventions. The Attorney General of the State of Texas, at the request of the State Chairman, handed down an opinion

* Petitioners similarly failed to state that the minority report of the 1928 Democratic Convention Credentials Committee cited by them as authority (Pet. Br., p. 62, 63) was offered only as a symbol of protest without debate and that the majority report was accepted by voice vote. Bain and Parris, *id.* at p. 232.

> in which he held that the statute above quoted not only did not permit the election by district conventions of district delegates to the National Convention, but affirmatively required that all delegates both at large and from congressional districts, be elected at a state convention. * * *
>
> "The right of delegates placed upon the temporary roll to their seats depends upon the construction of the statute. *The national committee by almost unanimous vote construed the state law in harmony with the opinion of the Attorney General of the state*, and this committee is of the opinion and so declares, that the statute above referred to, clearly authorizes the election of all delegates, both at large and district, at a state convention as provided in the call issued by the Republican State Committee of Texas." *Proceedings*, pp. 58-59. (Emphasis added.)

Thus, the majority report, recognizing the existence of a procedure which provided for reasonable grass roots participation under state law, was concerned not with defying the state law, but rather construing it.

Similarly, a credentials fight involving the 1952 Texas delegation to the Republican Convention demonstrates that the convention was concerned not with its own power (as amicus implies, Amicus Br., 26-27), but with implementing the state statutes which called for popular participation through conventions in selection of national convention delegates. Under Texas law, precinct conventions were held to select delegates to county conventions which in turn selected delegates to the state convention which would then choose the delegation to the national convention. The Texas Republican Party machinery in 1952 was controlled by pro-Taft officials. However, in most of the precinct conventions, pro-Eisenhower forces unquestionably outnumbered the Taftites and the latter therefore withdrew to form rump sessions. The same thing occurred at the county level. There, Taft forces bolted the 31 largest county conventions which selected pro-Eisenhower delegates. Notwithstanding the clear pro-Eisenhower majorities at both precinct and county

levels, the state convention credentials committee controlled by Taft forces seated pro-Taft delegates from 26 of the 31 largest counties. David, Moos and Goldman, 3 *Presidential Nominating Politics in 1952*, pp. 320-323.

At the national convention, the Texas "regulars" did not deny that Eisenhower supporters were in the majority at the precinct and county conventions, but treated this fact as irrelevant on grounds that the latter were not "true" Republicans. The national convention, however, seated the Eisenhower delegates who clearly represented the will of a majority of Republican rank and file voters in the state. Id. at 325, 328-329. The national convention's action did not restrain the method of selection authorized by state law. It implemented the spirit of the state statute by preventing the manipulation of state convention procedures to thwart the will of the majority.

The absence of conflict between the will of the national conventions and the results of state primaries is far more prominent than petitioners' recitation of convention history would indicate. For a period of 55 years (from 1912 to 1967), there were no significant challenges to popularly elected delegations. David, Goldman and Bain, *The Politics of National Party Conventions*, 264-265. The challenges to elected delegations in 1908 and 1912 cited by petitioners (Pet. Br. pp. 57, 62) are of limited authority when taken in the context in which they occurred.

In 1908, Republicans with the aid of a Democratic faction "raided" the primary in certain Philadelphia congressional districts. The majority report of the Democratic Convention Credentials Committee cited as an example of the raid, the sudden rise in Democratic primary votes from 1,000 in the past to 2,700 in the 1908 primary. Bain and Parris, *Convention Decisions and Voting Records*, (2d Ed., 1973), p. 175. There is also some question as to whether the Pennsylvania "primary" was held in accordance with state statute, as the law ". . . lay unnoticed on the statute books in 1908 . . ." Overacker, *The Presidential Primary*, p. 10 (1926).

The right of states to control the selection of delegates was included in the platform of the National Progressive Republican League in 1911:

> "The Progressive-Republican League believes that popular government is fundamental to all other questions. To this end it advocates . . . third, the direct election of delegates to national conventions with opportunity for the voter to express his choice for president and vice president . . ." Overacker, id. at pp. 14-15, quoting *LaFollette's Weekly*, February 4, 1911, p. 7.

Although the 1912 Republican convention unseated two pro-Roosevelt California delegates elected in a primary, the significance of that contest is diminished substantially when placed in the context of the bitter fight between Theodore Roosevelt and William Howard Taft which split the Republican party and lead to the formation of the Bull Moose Progressive Party. There were eleven credentials contests, each decided in favor of pro-Taft delegates by virtue of the fact that Taft forces controlled the convention. The technical reason for unseating the elected Roosevelt delegates was that Taft had carried the district in a presidential preference primary. The outcome of the credentials challenges was, however, clearly nothing more than the tactical exercise of political strength, a "steamroller", but not historical evidence of a need to preserve the integrity of a national convention by igoring the results of a state primary. Bain and Parris, *Convention Decisions and Voting Records* (2d Ed., 1973), p. 175; Overacker, *The Presidential Primary* (1928), pp. 166-167, 180. Moreover, a "storm of protest" greeted the convention's action and, in its call for the 1916 convention, the Republican party expressly recognized the right of states to control the method of selecting delegates. Overacker, *id.* at 166, 180.

In contrast to the action of the Republican convention, the 1912 Democratic National Convention expressly recognized the results of a state primary. Delegates committed to Woodrow

Wilson were elected in a South Dakota primary and were certified as having received a plurality of the vote by the appropriate state authority. However, the primary winners were denied credentials by the state Democratic Party secretary in favor of losing candidates committed to Champ Clark. The national convention, however, seated the delegates who had been elected in the primary. Even the anti-Wilson New York delegates joined in the voting for the elected Wilson slate. Bain and Parris, id., at p. 187.

The sole challenges to popularly elected delegations in recent times concerned the Alabama delegations to the 1964 and 1968 Democratic conventions and centered not on the qualifications of the delegates or whether, as here, they should even have been permitted to run in the primary, but rather whether such delegates, once seated, would support the party and its nominees. The Alabama loyalty issue arose, as it had with respect to other Southern states, because presidential electors chosen in the primary were not pledged to support the nominees. The 1964 convention recognized the right of elected delegates to convention seats but voted to accept them only upon the condition that they sign a loyalty oath. Several refused to do so and withdrew from the convention. *Congressional Quarterly*, August 28, 1974, p. 1959. In 1968, the loyalty issue again confronted the Alabama delegation. Robert Vance, speaking for the elected members of the delegation is reported to have stated:

> "Vance, in reply, says, 'The whole question is: what do you do with the so-called Wallace delegates in the regular delegation?' He explains that Alabama is 'infected with an overbundance of democracy' in the sense that 'we elect everybody', including national delegates, county and state committee members, national committee members and 'even' presidential electors. Vance repeats that the entire regular delegation was elected in an 'open primary' and everyone was free to participate including Republicans and others since there is no party registration in the state . . .

> But Vance says, 'When you turn everything over to the voters, you have to take the sour with the sweet.'" (Congressional Quarterly Service, *The Presidential Nominating Conventions — 1968*, p. 120).

The Credentials Committee majority recommended again that the elected Alabama delegates be seated upon accepting an oath to support the nominees of the convention. The Credentials Committee chairman, then Governor Richard Hughes, speaking in support of the majority report observed:

> "It was a primary where over a million and a half Alabamians, black and white, were eligible to participate as compared to the contestant selection at a meeting by its total membership of approximately 200." (Official Proceedings, Democratic National Convention, 1968, p. 217).

The convention voted to seat the elected delegates again upon condition that they take a loyalty oath. Those delegates who declined to take an oath left the convention. Governor Hughes' observations, however, might well be applied to the Chicago congressional districts in this case where 700,000 Democratic voters made their choice only to have that choice taken from them in small meetings of self-appointed representatives who selected themselves as delegates by proceedings from which the voters were expressly precluded from participation.

The right of a national convention to require its delegates to swear their support for the party's nominee is not at issue here. A loyalty oath concerns the future actions of delegates who, having enjoyed the benefits of attendance at and participation in the convention, must then—if the party is to survive—abide by the convention's choice of candidates for president and vice president. Since the convention's purpose and reason for being is the selection of such candidates, the party must have the right to protect the *bona fides* of its choice. That right has not been compromised by the decision of the Illinois Appellate Court, since no issue of party loyalty was before it.

The elected delegates from Illinois were not asked whether they would choose to take an oath as a precondition to seating or, by failing to do so, to voluntarily withdraw from the convention. The Convention replaced the elected delegates with persons who had not been elected on the theory that the former had no right to run in a primary or to seats if they won, regardless of their loyalty. The verdict of the Illinois electorate was, to the Convention, as irrelevant as the choice of the Texas Republican electorate at county and precinct conventions had been to the party officials who controlled the state convention in 1952. For a convention in this day and age to bar popularly elected delegates is to revert to the abuses and manipulation of the system which led to the passage of primary laws as a means of insuring fully effective participation by qualified voters in political affairs.

Just as the integrity of the convention's choice may be protected by the imposition of a loyalty oath, so the integrity of a state's primary election which gives its citizens a direct line of participation in the convention through elected delegates must be preserved by requiring that the state's citizens obey its election law. The American political system, like the Constitution, has undergone a continuous process of maturation as this Court has expanded suffrage and assured the sanctity of the vote at every step in the electoral process. To that end, this Court has rejected a wide variety of restrictions on the right to effective candidacy and voter participation. The national conventions have similarly matured from the days of self-appointed caucuses to an assembly "of the representatives of the people from the extremity of the union." The post-war conventions in particular reflect not the supremacy of the convention's will over state law, but rather an increasing awareness that conventions must be truly representative or risk failure as public institutions in a democracy. Conventions cannot be truly representative if popularly elected delegates are excluded.

IV.

THE INJUNCTION ORDERS OF THE CIRCUIT COURT OF COOK COUNTY WERE NOT BARRED BY ANY PRIOR COURT ACTION.

A. This Court's Action in Keane v. National Democratic Party, 409 U. S. 1 (1972), Did Not Foreclose the Right of an Illinois Court to Determine Questions Concerning the Legality of Petitioners' Slate.

This Court, in expressing "grave doubts" as to the propriety of the action taken by the Court of Appeals for the District of Columbia ("CADC") in its July 4, 1972 decision, (*Keane* v. *National Democratic Party*, 469 F. 2d 563), expressly did not reach the merits of the issues presented to the CADC, to-wit, the constitutionality of various Guidelines concerning selection of delegates to the Convention. Most certainly, the Court could not have reached or decided the merits of issues not before the DCDC or CADC, to-wit, "the questions of the legality of the slate certified by the Credentials Committee. . . . the state law claims which apparently are the basis of the state proceeding, and which were not before the District Court here." *Keane* v. *National Democratic Party*, 469 F. 2d 563, 573 (1972) (A. 57). In fact, this Court stayed the injunction issued by the CADC which had for its sole purpose the restraint of state court proceedings in which the legality under the Code of petitioners' actions was to be heard.

In view of the history of the case at bar, the purpose and result of the stay was to enable the Illinois court, time permitting, to hear respondents' claim under state law.* Time did so permit.

Even the CADC, in issuing a stay of its § 2283 (28 U. S. C. § 2283), injunction to permit appeal to this Court by Keane,

* Even petitioners' counsel, in contending at the July 8 hearing that this Court's decision precluded state court action, conceded "that there is some degree of ambiguity that does exist." (T. 7/8/72, p. 32)

recognized by implication that an unconditional stay would permit the Illinois action to proceed and would permit a determination of the legality of petitioners' position under state law. Thus, the CADC granted its stay conditioned upon Keane taking no action contrary to the opinion of the CADC absent the stay.

At the time that this Court stayed the judgment of the CADC, the case at bar had already been wrongfully enjoined by federal courts on three separate occasions. First, by its removal (See p. 7 *supra*); second, in the challengers injunction action, *Cousins* v. *Wigoda*, reversed by the Court of Appeals for the Seventh Circuit (See pp. 8-9, *supra*); third by the CADC. Although this Court in its per curiam opinion referred several times to the interjection of the federal judiciary into the convention process, it did not refer to any policy which might prevent a state court from vindicating valid and substantial state interests. "The Court was discussing the Federal courts and does not mention State laws, election of delegates or their rights, or the jurisdiction of State courts over their delegates." 302 N. E. 2d at p. 622. (A. 132.) In view of the history of the pre-convention litigation, it is certain that had this Court determined that it should properly prevent the resolution of the state claims in the case at bar by a state court it would have said so.

To have barred the state court in the instant case would have been contrary to considerations of comity and federalism expressed in 28 U. S. C. § 2283 and would have totally ignored the opinion of the Court of Appeals for the Seventh Circuit in *Cousins* v. *Wigoda*, 463 F. 2d 602 (1972), *application for stay denied*, 409 U. S. 1201 (1972), mandating to the Illinois state court questions under state law concerning delegate selection. Title 28 U. S. C. § 2283 is designed to limit intervention by the federal judiciary in pending state court proceedings. See, e.g., *Younger* v. *Harris*, 401 U. S. 37, 43, 44 (1971). In the circumstances of this case, petitioners cannot argue that a state

court may not proceed when an injunction issued under that section has been stayed by this Court. Moreover, as stated by the Court of Appeals for the Seventh Circuit in *Cousins* v. *Wigoda:*

> "There are valid reasons why the courts of Illinois may properly assume jurisdiction over some aspects of the controversy between Cousins and Wigoda. In the state complaint Wigoda has alleged full compliance with the provisions of the Illinois Election Code; Cousins has not . . . disputed those allegations. . . ." 463 F. 2d 603, 606.

That decision, not mentioned in this Court's opinion of July 7, remained fully effective throughout this litigation.

In the circumstances, the opinion of this Court did not bar an Illinois state court from making a determination of the important issues involved in the then-pending instant case. These issues may now be considered here without "time pressures . . . and . . . expedited review." 409 U. S. at p. 6. (A. 68.)

B. The July 5 Judgment of the Court of Appeals for the District of Columbia Had No Binding Collateral Estoppel or Res Judicata Effect Which Might Have Bound the Illinois State Court.

The discredited opinion of the CADC in *Keane* (469 F. 2d 563) had neither res judicata nor collateral estoppel effect. This is demonstrated by the circumstances in which that decision arose, an examination of the issues heard and decided by the DCDC and CADC, and the policy giving rise to the doctrines upon which petitioners mistakenly rely.

Res judicata depends upon an identity of issues. *Blonder-Tongue Laboratories* v. *University Foundation*, 402 U. S. 313, 323 (1971). Collateral estoppel may be applied only with respect to those issues decided and necessary to the decision in that case relied on for res judicata effect and as to which there is an "opportunity for full and fair trial." *Bourns, Inc.* v. *Allen-Bradley Co.*, 480 F. 2d 123 (7th Cir., 1973); 1B Moore's

Federal Practice 3777 (2d Ed., 1965); *Blonder-Tongue Laboratories* v. *University Foundation,* 402 U. S. 313, 330 (1971); *P. I. Enterprises, Inc.* v. *Cataldo,* 457 F. 2d 1012 (1st Cir., 1972); *Rachal* v. *Hill,* 435 F. 2d 59 (5th Cir., 1970), *cert. denied* 403 U. S. 904 (1971); *Blumcraft of Pittsburgh* v. *Kawneer Co., Inc.,* 482 F. 2d 542 (5th Cir., 1973).

The *Keane* case before the DCDC and the CADC sought a declaration that certain Guidelines for the Convention were unconstitutional and could not be used to bar Keane and the class of popularly elected delegates which he sought to represent from participation in the Convention.* The DCDC, *without hearing any evidence,* but only Oral Arguments held three of the Guidelines of which Keane complained to be unconstitutional but denied relief on the fourth. Recognizing that no state law issues were before it, the DCDC denied the Democratic National Committee's motion to enjoin prosecution of the instant case which was then pending in the state court. The CADC affirmed as regards the fourth Guideline.

The CADC, however, in deciding the issues before it stated:

"No violation of Illinois law is at issue here" (A. 54), and continued:

> "Judge Hart [DCDC] based his denial of the counterclaim [the request for injunction] on the grounds that the question of the *legality* of the slate certified by the Credentials Committee in lieu of the plaintiffs was not before him, and that there was no justiciable issue presented in this action concerning the eligibility of the members of that slate to represent the Illinois districts in question. (Emphasis added.)
>
> "In so ruling Judge Hart seems to have focused solely on the state law claims which apparently are the basis of the state proceeding, and which were not before the district court here." (A. 57.)

The instant case concerns precisely those state law claims "which were not before" the District of Columbia courts, for

* At no time was there a declaration of class in the *Keane* litigation.

which there was no "opportunity for full and fair trial," and which concern the integrity of the electoral process in Illinois and the state's interest in the protection and preservation of that process. In the instant case, Wigoda sought to enjoin petitioners from usurping the state election process, violating Illinois law and nullifying voters' and candidates' rights. The action was brought in an Illinois court solely against Illinois citizens subject to the court's jurisdiction. The Illinois court, in unchallenged findings, found that the delegates elected under the Illinois statutes, persons of white, black and Latin American extraction including males and females of all adult ages (A. 86), were elected to office

(1) in contested elections held in accord with the Illinois Election Code;

(2) by a majority of the qualified electors of the Democratic Party; and

(3) in an election which was free, equal, non-discriminatory and open to all qualified persons as candidates and voters without limitation. (A. 87.)

The trial court further found that petitioners were elected by a process

(1) which defendants [petitioners] devised on their own authority which was secret, restrictive, discriminatory, without foundation in law and without regard or recognition to the individual citizens of the congressional districts who voted in the election conducted pursuant to the Illinois Election Code;

(2) which deprived duly qualified voters of their right to vote and to vote effectively; and

(3) which subverted, thwarted and nullified the electoral procedure of the state. (A. 88.)

On these unchallenged findings there is ample authority in law for the Illinois court to act to protect the delegates, the voters and the electoral process. Moreover, none of these issues

concerning the Illinois electoral process and the legality of the competing delegations were litigated in the District of Columbia courts, nor was any evidence taken there concerning the said issues. Finally, petitioners have at no time sought to prove that these issues were before any court other than the state court or that any other court considered them or made findings with regard thereto. 302 N. E. 2d at p. 623. (App. 134.)

The right of the state court to hear these issues, however, was before the Court of Appeals for the Seventh Circuit, which held:

> "There are valid reasons why the courts of Illinois may properly assume jurisdiction over some aspects of the controversy between Cousins and Wigoda. In the state complaint Wigoda has alleged full compliance with the provisions of the Illinois Election Code; Cousins has not . . . disputed those allegations . . . Indeed, the Rules of the National Convention, contemplate reference to state law in connection with various issues." (*Cousins* v. *Wigoda*, 463 F. 2d 603, 606.)

This Court, acting through Mr. Justice Rehnquist, denied an application for stay of the mandate of the Court of Appeals of the Seventh Circuit. 409 U. S. 1201 (1972). Thus, it appears that *Cousins*, which specifically authorized Wigoda to proceed in the state court, and not *Keane*, is the controlling prior judgment.

Moreover, the two decisions (*Keane* and *Cousins*) must each be examined in the context of the issues raised and the relief sought. In the instant case, which was the subject of the Seventh Circuit's decision, the complaint sought a declaration concerning whether Wigoda and the challenged delegates were validly elected under the Code and an injunction to prevent those not so elected from attending the Convention as delegates. The National Democratic Committee was not a party to those proceedings. Judge Covelli's orders of July 8 and August 2, 1972, did not require the Convention to seat the duly elected delegates, but rather enjoined certain Illinois citizens from

violating Illinois law by assuming offices to which they had not been duly elected. Under the decision of the Seventh Circuit in *Cousins*, such orders were clearly within the province of the state court.

The CADC recognized that the sole purpose of its injunction was to effectuate its judgment.

> "In order to protect our judgment aproving this Resolution, it is necessary to enjoin plaintiffs from taking any action in any other court that would impair the effectiveness and the integrity of the judgments of this Court." 469 F. 2d at p. 5. (App. 59.)

The necessity of protecting and effectuating the CADC's judgment fell with this Court's stay of that judgment and its expression of

> "grave doubts as to the action taken by the Court of Appeals." 409 U. S. at p. 5. (App. p. 67.)

There would have been no purpose for this Court's stay if not to permit respondent to proceed in the state court. Indeed, the CADC later confirmed that this Court meant what it said in issuing the stay, stating ". . . We think doubts suggested by [Cousins] as to the scope of the stay entered by the Supreme Court should be resolved by interpreting the Court's stay as suspending the operation of the injunction issued by this Court, July 5, 1972 . . ." *Keane* v. *National Democratic Party*, unpublished order. (See, Appendix E.)

Respondent was improperly enjoined in lower federal courts three times in this litigation from proceeding to vindicate his rights in the state courts. Each injunction was dissolved or stayed. For petitioners to claim that, notwithstanding these orders permitting Wigoda to go forward, he was somehow barred by the collateral estoppel effect of a proceeding to which he was not party (See 302 N. E. 2d at p. 623, App. 134) extends the doctrine of *res judicata* beyond any recognizable parameters. Whatever this Court's decision might be on the merits, respondent has not been previously barred by *res judicata* or

collateral estoppel from proceeding to a determination of his rights under state election laws.

Sound public policy, too, dictates that a discredited judgment, for the protection of which a court erroneously issues a Section 2283 injunction, should not be used to bar a state from vindicating interests as important as those pertaining to the right of its citizens to vote. Any other result would run counter to important considerations of comity and federalism. See *Younger* v. *Harris*, 401 U. S. 37 (1971).

Lastly, petitioners imply that the Supremacy Clause affects the instant matter. (Pet. Br. 30). It would demean the Supremacy Clause if it were employed to compel a state court to recognize a stayed and subsequently vacated judgment which this Court had strongly criticized prior to the time the state's order was issued.

V.

PETITIONERS HAVE NOT BEEN DEPRIVED OF "AN UNBIASED JUDGE"

Petitioners were afforded a fair hearing before an experienced trial judge. Their claim that the trial judge was biased does not stand analysis.

The evidence presented at the July 8 hearing was uncontested. Petitioners did not object to the trial judge's findings made after hearing evidence and examining the record. Nor did they seek an immediate appeal from his order even though procedures were available to them to do so. Instead, as found in the August 2 hearing, petitioners, in violation of the order of July 8, "acted or purported to act as delegates or alternates to said Convention and sought to perform the functions of delegate or alternate including voting on behalf of the [various congressional districts herein involved]" (A. 117).

It was only after petitioners had violated the July 8 injunction that only certain of petitioners sought a change of venue, basing

their demand upon an unverified newspaper article.* The newspaper attributed statements to the trial judge, which statements were allegedly made some time after he had heard the evidence and entered a decree.

Petitioners' Brief (p. 18) contains only the allegations made by petitioners in support of their motion for change of venue. It does not contain the trial judge's response. Said response from the bench to the charges made is reprinted here in pertinent part:

> "Insofar as the statements are attributed to me I did tell a young reporter part of it. It was two minutes to ten. I had my robe on and I was coming out here to work. This young reporter came in and said, 'Judge, will you please give me a statement?'
>
> "I said, 'I have got to go to work.'
>
> "He said, 'Well, Judge, if I don't get a statement I might get fired.'
>
> "So I said, 'All right, sit down.'
>
> "So he sat down and he said, 'What are you going to do about this?' [i.e. the televised violation of the July 8 injunction.]
>
> "I said, 'I can't do anything about it. I am the referee, I am the umpire. There is nothing I can do until or if a petition is presented.'
>
> "He said, 'Well, what can they do in Florida?'
>
> "I said, 'Well, every lawyer knows that the Federal Constitution says that each state must give full faith and credit to the decrees of another sister state.' And I said, 'The case of Rule v. Rule, 313 Illinois Appellate 108, although it is a divorce case establishes that law.' And I said, 'In my opinion the Daley outfit can file a petition in the court in Florida attaching a copy of my injunction writ and ask that court to enforce it.'
>
> • • • • •

* A substantial number of petitioners expressly disassociated themselves from the motion for change of venue or recusal. (T. 7/31/72, pp. 63, 65).

"Insofar as the other statement attributed to me, I did not make that statement to this reporter. What happened was I received a phone call while he was sitting in my chambers from a citizen. I have received several of them about this case. And I told all of them the same thing: There is nothing I can do, I cannot initiate any action and I don't intend to. Some of our citizens don't understand that.

"This particular man, whomever he was, said to me over the phone, 'Well, don't you think that Mr. Singer, delegating himself the powers that he has, has acted like Hitler in Germany and Mussolini in Italy?'

"And I said, 'Oh, come now, I am busy, I have got to go to work.'

"And he said, 'Well, don't you agree with me?'

"And I said, 'Yes.'

"And he said, 'No, I want you to tell me how you agree with me.'

"So I repeated those words that he used on the telephone, and this reporter, being a young man, didn't know that he had no right to quote me because I didn't say this to him, I said it on the telephone.

"Now, he came in to see me this morning and asked me what it was all about, and I told him. * * *" (T. 7/20/72, pp. 24-27.)

The trial judge explained the remarks which petitioners allege he made. His remarks as alleged by petitioners were taken out of context and misconstrued. His explanation is unchallenged. The fairness and adequacy of the hearing is best demonstrated, not by the trial judge's subsequent remarks, but by petitioners' failure at any stage of the proceedings to object to any of his findings of fact which underscore the injunctions issued against them.

The Illinois Appellate Court has found the action of the trial judge to be proper. 302 N. E. 2d at p. 632. (A. 151-152.) There is no federal infirmity in his failure to recuse himself. It has been consistently held that a judge may not be disqualified by his expression of views obtained from evidence presented in the course of judicial proceedings before him. *Baskin* v. *Brown*, 174 F. 2d 391, 394 (4th Cir. 1949); *Craven* v. *United States*, 22 F. 2d 605, 607-608 (1st Cir. 1927); *United States* v. *Grinnell Corp.*, 384 U. S. 563, 583 (1966). Here, the trial court's alleged remarks were made after evidence had been received and a decree entered. His comments were not predicated upon extra-judicial sources. In the circumstances, the trial judge did not display "bias".

CONCLUSION.

Based upon the foregoing, respondent and the class which he represents respectfully pray that the judgment of the Illinois Appellate Court be affirmed.

Respectfully submitted,

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APPENDIX A

BALLOT PLACEMENT AND RESULTS OF THE PRIMARY CANVASS FOR DEMOCRATIC PARTY DELEGATES TO THE NATIONAL NOMINATING CONVENTION FROM THE FIRST, SECOND, THIRD, FIFTH, SEVENTH, EIGHTH, NINTH AND ELEVENTH ILLINOIS CONGRESSIONAL DISTRICTS.

1st Congressional District

Total Dist. Party Vote—95419

Delegates to the National Nominating Convention

36868	Denise R. Harrell (Uncommitted)
37337	William H. Shannon (Uncommitted)
38781	Marshall Korshak (Uncommitted)
28165	Krishna Ray (Uncommitted)
50817	Ralph H. Metcalfe (Uncommitted)
35619	William H. Harvey (Uncommitted)
22762	Jo Freeman (Chisholm)
19484	Rosemarie C. Gulley (Kennedy)
8775	Ginger R. Mack (Uncommitted)
15531	Samuel M. Ackerman (Kennedy)
13692	Leona R. Black (Uncommitted)
14948	George L. Lowe (Kennedy)
14741	Jacquelyne D. Grimshaw (Kennedy)
9152	Henry Brown (Uncommitted)
14404	William J. Raft (Kennedy)
29895	Claude W. B. Holman (Uncommitted)
26864	John H. Stroger, Jr. (Uncommitted)
12459	Sheldon Roodman (Muskie)
8356	James A. Sanders (Uncommitted)
16708	Kathryn A. Clement (McGovern)
14955	Annette Guice (McGovern)
15129	Donald N. Levine (McGovern)
15906	James W. Wagner (McGovern)
14532	Andrew J. Hargrett (McGovern)

2ND CONGRESSIONAL DISTRICT

Total Dist. Party Vote—94360

DELEGATES TO THE NATIONAL NOMINATING CONVENTION

42833	Wilson Frost (Uncommitted)
40774	Edward R. Vrdolyak (Uncommitted)
45929	Morgan F. Murphy (Uncommitted)
36947	Henry M. Soltysinski (Uncommitted)
34895	Clair M. Roddewig (Uncommitted)
26477	Julian H. Johnson (Kennedy)
25158	Jacqueline E. Anderson (Kennedy)
24535	John P. Ahern (Kennedy)
28748	Mary Lee Leahy (Kennedy)
18710	Saul Mendelson (Kennedy)
18829	Annette M. Barrash (Kennedy)
20583	Carmen Chico (Kennedy)
18014	Louis Hirsch (Kennedy)
31173	Alexander A. Adduci (Uncommitted)
35955	Vincent A. Carey (Uncommitted)
29195	John H. Kowalewski (Uncommitted)
10345	Lar (America First) Daly (Daly)
9663	James W. Schroeder (Daly)
16232	Anthony J. Frazier (Uncommitted)
15394	Charles P. Hounihan (Uncommitted)

3RD CONGRESSIONAL DISTRICT

Total Dist. Party Vote—35777

DELEGATES TO THE NATIONAL NOMINATING CONVENTION

7814	Jack C. Davis (Muskie)
6503	Robert Wilderman (Muskie)
6667	Roberta D. Roberts (Muskie)
5984	Walter E. Laube (Muskie)
5836	Harry C. Skulte (Muskie)
5695	Paul A. Hazard (Muskie)
6559	John L. Sullivan, Jr. (McGovern)
13558	Albert R. Russel (Uncommitted)

5653	Caryl M. McCarthy (McGovern)
13267	Lawrence Petta (Uncommitted)
13062	Patrick M. O'Block (Uncommitted)
15646	John M. Daley (Uncommitted)
11813	Harry "Bus" Yourell (Uncommitted)
5395	Mary E. Barrett (McGovern)
13755	Daniel P. Coman (Uncommitted)
4207	Robert L. Engler (McGovern)
4265	Henry E. Stanton (McGovern)
2767	Mary Lee Inger (Muskie)
4647	Thomas W. Kelly (Muskie)
2981	Melvin D. Konrath (Muskie)
2284	Catherine Poindexter (Muskie)
3275	Margaret P. Shatkowski (Muskie)
2474	Conrad C. Kissel (Muskie)
7194	Jo Anne M. Caplis (Uncommitted)

5TH CONGRESSIONAL DISTRICT

Total Dist. Party Vote—109665

DELEGATES TO THE NATIONAL NOMINATING CONVENTION

70215	Matthew J. Danaher (Uncommitted)
66279	Theodore A. Swinarski (Uncommitted)
64109	Lillian M. Piotrowski (Uncommitted)
61045	Michael J. Madigan (Uncommitted)
53381	Cecil A. Partee (Uncommitted)
22573	Bernie R. Noven (Muskie)
23470	Rosemary E. Glynn (Muskie)
20475	Reginal Williams (Muskie)
21120	Donald Segal (Muskie)
18257	James N. Teale (Muskie)
19258	Gwendolyn B. Woods (Muskie)
23078	John A. Paskiewicz (Muskie)
53687	Edward M. Burke (Uncommitted)
60015	Richard J. Daley (Uncommitted)
54974	Frank K. Kuta (Uncommitted)
19079	Michael S. Shaw (Uncommitted)
22117	Kevin D. McInerney (Muskie)

7TH CONGRESSIONAL DISTRICT

Total Dist. Party Vote—89075

DELEGATES TO THE NATIONAL NOMINATING CONVENTION

45144	John D'Arco (Uncommitted)
14198	Florence Scala (Kennedy)
12863	Patrick M. Murphy (Kennedy)
10634	James Gullatte (Kennedy)
11327	Richard L. Criley (Kennedy)
12829	Rena Elizabeth De Bruin (Muskie)
9229	Sheldon L. Dittemore (Kennedy)
10914	Suzanne N. Asher (Kennedy)
9945	Fred T. Licciardi (Kennedy)
39857	Richard J. Troy (Uncommitted)
40427	Isaac Sims (Uncommitted)
42232	Vito Marzullo (Uncommitted)
41783	Mathew W. Bieszczat (Uncommitted)
44530	George W. Collins (Uncommitted)
39965	Edward A. Quigley (Uncommitted)
41281	George W. Dunne (Uncommitted)
10385	Enid H. Long (Uncommitted)
8448	Catherine Ann Crowley (McCarthy)
6458	Ronald Dorfman (McCarthy)
6424	Fred Levin (McCarthy)
6122	Bernard T. Peele (McCarthy)
5951	Ellen Peele (McCarthy)
5936	Bonni K. Steffenson (McCarthy)
6412	Norman D. Steffenson (McCarthy)

8TH CONGRESSIONAL DISTRICT

Total Dist. Party Vote—100155

DELEGATES TO THE NATIONAL NOMINATING CONVENTION

57424	Thomas J. Casey (Uncommitted)
27543	Glynn O. Sudbery (Muskie)
30293	Peter A. Andersen (Muskie)
27676	Kenneth Machynia (Muskie)
27759	Carol C. Zavala (Muskie)

25722	Lawrence T. Princivalli (Muskie)
25095	David P. Firnhaber (Muskie)
46671	Robert G. McPartlin (Uncommitted)
47184	Joseph A. Serritella (Uncommitted)
57234	Daniel D. Rostenkowski (Uncommitted)
49328	Louis P. Garippo (Uncommitted)
43753	Bettye Ashford (Uncommitted)
43301	Maria Blanca Browning (Uncommitted)
49537	Thomas E. Keane (Uncommitted)
18228	Judith M. Bieberle (McCarthy)
17291	Faith E. Ruffing (McCarthy)

9TH CONGRESSIONAL DISTRICT

Total Dist. Party Vote—110735

DELEGATES TO THE NATIONAL NOMINATING CONVENTION

25194	Judah L. Graubart (Muskie)
24788	Natalie Forman (Muskie)
25260	James H. Schwartz (Muskie)
21405	Linda G. Johnsen (Muskie)
23575	Meryl Steinberg (Muskie)
19145	Forbes J. Shepherd (Muskie)
18100	Carla Zoe Petersen (Muskie)
32651	Paul T. Wigoda (Uncommitted)
24902	Paul H. Stepan (Uncommitted)
20981	Carol G. Hochfelder (McGovern)
26132	Deana Lerner (Uncommitted)
25150	Jerome Huppert (Uncommitted)
31205	Neil F. Hartigan (Uncommitted)
19952	Sheldon Toby Zenner (McGovern)
19899	Elizabeth E. Brackett (McGovern)
11760	Ronald D. Freund (Nader)
23843	Marilou Hedlund (Uncommitted)
23448	Martin Tuchow (Uncommitted)
19444	Scott Hodes (Uncommitted)
13524	Margaret M. Sullivan (Uncommitted)
11393	Marge I. Markin (Muskie)
11078	Sharon Z. Alter (Muskie)
10046	Daniel J. McMahamon (Chisholm)
18115	Caryl Bendinger (McCarthy)

18610 Avram S. Meyers (McCarthy)
17470 Herbert M. Kraus (McCarthy)
16940 Martha E. Pitts (McCarthy)
13329 Algis K. Augustine (McCarthy)
13296 Bruce H. Bendinger (McCarthy)
11555 Ramsay L. Klaff (McCarthy)
13327 Janice E. Glenn (McCarthy)
10486 Adrienne M. Levatino (Muskie)
10259 Jeffrey Blake Winton (Muskie)

11TH CONGRESSIONAL DISTRICT

Total Dist. Party Vote—110719

DELEGATES TO THE NATIONAL NOMINATING CONVENTION

52772 Anthony C. Laurino (Uncommitted)
57545 Seymour Simon (Uncommitted)
56056 John C. Marcin (Uncommitted)
72053 Roman C. Pucinski (Uncommitted)
28204 James W. Marcinkowski (Muskie)
25179 Ralph M. Tencza (Muskie)
28883 John T. Mitchell (Muskie)
20584 James Paquet (Muskie)
20314 Dominic D. Magno (Muskie)
21567 Cathy Ann Grossmayer (Muskie)
24248 Michael S. Holewinski (Muskie)
18829 William J. Bobzin (Muskie)
37783 Thaddeus S. Lechowicz (Uncommitted)
40289 P. J. Cullerton (Uncommitted)
45982 Richard J. Elrod (Uncommitted)
42899 Thomas G. Lyons (Uncommitted)
19351 Bert C. Bielski (Muskie)
15912 Mary Gsodam (McCarthy)
17251 Raymond P. Kaepplinger (Uncommitted)
17386 David Rothstein (McCarthy)
17153 Marc H. Slutsky (McCarthy)
15896 H. R. Toch (McCarthy)

APPENDIX B

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN CONNECTION WITH THE REMAND ORDER ON THE CHALLENGERS' REMOVAL.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit,
Chicago, Illinois 60604.

June 30, 1972

Before

HON. WALTER J. CUMMINGS, *Circuit Judge*
HON. WILBUR F. PELL, JR., *Circuit Judge*
HON. JOHN PAUL STEVENS, *Circuit Judge*

PAUL T. WIGODA, ETC., *Plaintiff-Appellee,*
vs.
WILLIAM COUSINS, ET AL., *Defendants-Appellants.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

(72 C 1001)

This cause is before the Court on the motion of the appellants requesting the Court to reconsider its order of June 7, 1972, dissolving its stay of the remand order of the district court and that upon such reconsideration, the remand order be stayed pending appeal.

The only issue presented on this appeal is whether the district court erred in determining that the appellants were not entitled to remove the case below from the Circuit Court of Cook County, Illinois, to the Federal District Court for the Northern

District of Illinois and ordering that the cause be remanded to the state court.

A brief in support of their position has been filed by the appellants who, because of time factors involved in this litigation, have requested consideration on an expedited basis.

Upon consideration of the matter before us, and the arguments presented in appellants' brief, we are of the opinion that no worthwhile purpose would be served by suspending the decision of this Court until the filing of the appellee's brief.

Accordingly, being duly advised in the premises, the reasoning and result set forth in the memorandum opinion of the district court is now adopted as the opinion of this Court and the order of the district court is affirmed and this appeal is dismissed.

We express no opinion as to the effect of state law on the determination of proper delegates to the Convention.

APPENDIX C

OBJECTIONS TO THE REPORT OF THE HEARING OFFICER

NOTICE OF REQUEST FOR CONSIDERATION AND EXCEPTIONS TO FINDINGS OF FACT AND TO RULINGS OF THE HEARING OFFICER.

Now come Thomas E. Keane and Paul T. Wigoda, pursuant to Rule 8 of the Rules of Procedure of the Credentials Committee of the 1972 Democratic National Convention and state the following exceptions to findings of fact and to rulings of the hearing officer, Cecil F. Poole.

1. The hearing officer committed serious error and deprived the parties of due process rights to fair hearings by refusing to convene hearings at a time at which the challenged delegates could present a defense on any date other than the date upon which all duly elected delegates to the Democratic National Convention were scheduled to be in Springfield, Illinois for a previously scheduled convention of the Democratic Party. Although the hearing officer was advised of the scheduled convention date long in advance of the time of his order wherein he set the date upon which challenged delegates could present evidence, he persisted in his order that no evidence could be presented other than on that date. Any court in the land would have permitted a continuance to a date upon which the challenged delegates could present evidence. The hearing officer here refused to consider a request for even a day's extension of time. The failure to provide adequate time for the presentation by the challenged delegates of a defense deprived them of due process rights to a fair hearing, tainted the proceedings with error and resulted in biased, distorted and erroneous findings.

2. The hearing officer violated all notions of due process in that he made no findings nor sought to make findings directed against any individual challenged delegate. Instead, the hearing

officer has, in effect, found them all guilty by association. Such innuendo, denunciation and findings are not characteristic of the Democratic Party. The hearing officer, in failing to make findings directed against individuals, has ignored the traditional concern of the Democratic Party for invidiual rights and individual liberties. His findings are characteristic of the type of charges made by members of the opposition party in the early 1950's.

3. The findings of the hearing officer ignore and violate the principle of free and open elections.

The hearing officer ignored the fact that the challenged delegates were elected to office in contested elections in which almost one million voters voted. There were no charges of fraud or wrongdoing in the election. No election contests were filed. Anyone could seek nomination and all registered voters were entitled to vote.

Considerable evidence was presented to the hearing officer concerning diligent attempts by the Cook County Democratic Organization and the other regular Democratic organizations throughout the area to register as many voters as possible to take part in Illinois elections. Voter registration extended throughout the various communities of Chicago, regardless of the race of the residents of said community. The hearing officer failed completely to comment upon the extensive registration drives and the free and open nature of the nominating and election process in Illinois. Such free and open election process and the attempts at registration seriously undermine the findings of the hearing officer.

4. The hearing officer failed to hear and consider the serious claims made concerning the alleged unconstitutionality of Guidelines A-1, A-2, C-4 and C-6, although requested to do so. Attached hereto and made a part hereof as Exhibits 1 through 7 respectively are Motion of Thomas E. Keane to Dismiss So-Called "Challenge", Answer of Thomas E. Keane to So-Called "Challenge", Motion of Paul T. Wigoda to Dismiss So-

Called "'Challenge", Answer of Paul T. Wigoda to So-Called "Challenge", Memorandum of Law with Respect to So-Called "Challenges" Against Thomas E. Keane and Paul T. Wigoda, pages 194 through 198 of the transcript before the hearing officer concerning motions to dismiss made prior to the taking of evidence, and pages 1412 through 1417 of the transcript relating to motions to strike certain evidence made at the conclusion of the presentation of evidence. The hearing officer's failure to consider the various legal issues raised therein seriously taint his findings and demonstrate the total inadequacy of the hearing insofar as this "challenge" is concerned.

5. The hearing officer has ignored the fact that in Illinois, where the Constitution and laws provide for free and open election of delegates to the National Nominating Convention of each party, the right to sit as a convention delegate is exclusively controlled by the Illinois Election Code.

6. The hearing officer has ignored the fact that the laws of the State of Illinois were enacted to enable said state to comply with the spirit of the present party rules by providing for the free and open election of delegates. If said laws conflict in any way with party rules, the laws supersede the rules insofar as the rules might (1) nullify a free and open election by the people of the State of Illinois, or (2) impose any racial, age or sex quotas, or (3) abridge rights of free speech and association.

7. In no event can Guideline C-4 apply in circumstances such as in Illinois where the laws of the State of Illinois (Ill. Rev. Stat. ch. 46, § 7-8) expressly provide for the election of party officials prior to the year in which the convention occurs. It is not necessary for duly elected party officials to resign their office in order to speak out or endorse candidates as would be required by Rule C-4.

8. The findings of the hearing officer serve to usurp the free and open election process. Acceptance of the findings of the hearing officer by the Credentials Committee will lead to a result contrary to the spirit of the party rules seeking more rather

than less participation. As stated in the Mandate for Reform, "The cure for the ills of democracy is more democracy." To disregard the results of a valid and open election wherein all members of the electorate could participate as voters or candidates certainly does not lead to a "more democratic" result but enables a small backroom group to determine rights to elective office.

WHEREFORE, Thomas E. Keane and Paul T. Wigoda respectfully pray that the Credentials Committee dismiss the challengers and confirm the seating of the delegates elected by the people of Chicago in a free and open election.

Respectfully submitted,

THOMAS E. KEANE and PANL T. WIGODA
By /s/ JEROME H. TORSHEN,
Jerome H. Torshen,
Their Attorney.

APPENDIX D

MIKE ROYKO, A HARD LOOK AT 'SINGER 59', *CHICAGO DAILY NEWS*, JULY 5, 1972

Dear Ald. Singer:

You are a spunky guy, Bill, and I like you. You served as a judge in my Penny Pitching Contest. There aren't many aldermen I would have trusted with all those coins.

I admire the way you stand up and tangle with the mayor at City Council meetings. In general, you are good, honest, true, as well as smart and energetic, although you could lose a few pounds.

So I hate to tell you this, but if I were a delegate in Miami Beach next Monday, I would vote to seat "Daley's 59," not your 59.

Not because I think they are better people. I admire many of your 59. Some are friends of mine. On the other hand, most of Daley's delegates would cheerfully string me up from a tree.

And not for reasons of political expediency, although I think Daley's outfit can generate more votes next November than your enthusiastic amateurs.

But I just don't see where your delegation is representative of Chicago's Democrats. And that is what this thing is really all about, since we are talking about the Democratic National Convention.

Take all of the talk about rules for reforming the party, opening it up to more people.

You claim to have done that with the "Singer 59."

About half of your delegates are women. About a third of your delegates are black. Many of them are young people. You even have a few Latin-Americans.

But as I looked over the names of your delegates, I saw something peculiar. It might not be noticeable to somebody from another part of the country, but it jumps out at a native Chicagoan.

There's only one Italian name there.

Are you saying that only one out of every 59 Democratic votes cast in a Chicago election is cast by an Italian?

And only three of your 59 have Polish names.

Does that mean that only 5 per cent of Chicago's voting Democrats are of Polish ancestry?

If that were true, a Republican would be mayor of Chicago.

Your reforms have disenfranchised Chicago's white ethnic Democrats, which is a strange reform.

Don't tell me that it shouldn't matter what a person's ethnic background is. If it is important to a black that he has a black representative, which it is, than it matters to Uncle Stanley that a pierogi-eater be out in front for him.

You can't sit down and decide to have this many black delegates, that many women, this many Chicanos, that many young people, then almost ignore the existence of white ethnic groups.

Oh, I guess you can do it. If you are goofy enough.

Not that Daley's delegation is perfect in this respect.

He still thinks there are more Irish than anyoody else in Chicago, so 16 of the Daley delegates are of that background. And he has only five women, and few Latin-Americans.

But he does have 10 Poles, 7 Italians, 5 Jews, a scattering of WASPS, Germans and those undefineable names known as "Americans," and 12 blacks.

While he doesn't have a perfect balance either, his delegates come much closer to reflecting the people who vote as Democrats in Chicago than yours do.

The other thing that bothers me about your delegation is that about half of it or more ran in the primary and got stomped.

Some didn't get enough votes to win a student council election in a one-room schoolhouse.

Yes, I know the Machine can do strange and wondrous things in the polling place. I know about the clever ways of the precinct captain, and that most of Daley's delegates are the bosses of their wards.

But if every precinct captain slept through primary day, your candidates would have still been counting their votes on their fingers and toes.

Do you really think the Machine would have to flex any of its muscle in the 5th Congressional District to prevent your Reginald Williams from defeating somebody named Richard J. Daley?

Or that without the prodding of payrollers, the many Poles of the 11th Congressional District would have abandoned somebody named Roman Pucinski for your charismatic Cathy Ann Grossmayer?

Your people ran—and they should get credit for it—but they lost. The only way they could have won would have been if none of Daley's people was on the ticket in the first place. And it is asking an awful lot, even in the name of reform, for Richard J. Daley to step aside for Reggie Williams.

It makes even less sense to me that some of your other delegates are people who didn't try to run in the primary. Your co-leader, Jesse the Jetstream, didn't make it to his local polling place. He's being hailed as a new political powerhouse and he couldn't deliver his own vote.

Now they are delegates, having been declared so by themselves, at meetings that were about as open as the Harvard Club. When Vito Marzullo showed up and called them "mother——," they were horrified. Heck, I heard thousands of young McCarthy and McGovern backers chanting "F—— You, LBJ," for hours at the 1968 convention, and some of them are today's reform delegates. Can't an old ward boss express himself, too?

In closing, Bill, forget what I said earlier about losing a few pounds.

Anybody who would reform Chicago's Democratic Party by dropping the white ethnic, would probably begin a diet by shooting himself in the stomach.

APPENDIX E.

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

September Term, 1971

Civil 1320-71 and 1010-72

No. 72-1631

THOMAS E. KEANE,

vs.

NATIONAL DEMOCRATIC PARTY, ET AL.,
WILLIAM COUSINS, ET AL.,

Appellants.

Before: BAZELON, *Chief Judge*, FAHY, *Senior Circuit Judge*, and MACKINNON, *Circuit Judge*.

ORDER.

On July 28, 1972, appellants filed a motion for emergency rule to show cause and for injunction. Counsel for the parties have filed responsive pleadings with respect thereto.

Whereas on July 7, 1972, the Supreme Court of the United States stayed the judgments of this court entered herein July 5, 1972, and

Whereas we think doubts suggested by appellees as to the scope of the stay entered by the Supreme Court should be resolved by interpreting the Court's stay as suspending the operation of the injunction issued by this court July 5, 1972,

The Emergency Motion for a rule to show cause is denied;

And whereas in light of the status of the proceedings in this case we think this court is not an appropriate forum for the initiation of new proceedings for an injunction based on intervening events in the courts of Illinois,

The Emergency Motion for injunction is also denied.